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ADMINISTRATIVE
HEARINGS

July 5, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

Dear Judge Lipman:

I am writing to express my hopes for the future of the Mississippi River Corridor Critical Area (MRCCA) and the Mississippi National River and Recreation Area (MNRRA) as this local, state and national treasure approaches its 28th anniversary as a part of the National Park Service and in the year in which the National Park Service celebrates its centennial.

While many writing to you, Judge Lipman, will express highly technical concerns, I am going to keep my message quite basic.

My late husband, Bruce Vento, was a part of the effort in the creation of MNRRA. Bruce was a lifelong resident of St. Paul and as a passionate advocate for our environment, wilderness and national parks. Oh, how I wish he was here today to eloquently articulate the case for our treasured Mississippi. Instead, I'll make an attempt.

Over the last few weeks I have pondered how to best express myself to you in this rule-making comment process. It occurred to me over the weekend what a rare and priceless fact it is that to date the confluence of the Mississippi and the Minnesota Rivers has remained as accessible as it is today. Unquestionably, much needs to be done to address water quality issues in both rivers, and most particularly, agricultural run-off into the Minnesota River. However, I hope this sacred, historic and gorgeous section of MRCCA/MNRRA will continue to be accessible and sheltered from over-development. I am particularly concerned about those who would destroy the sacredness and beauty of this area by erecting big buildings that would forever scar the view shed.

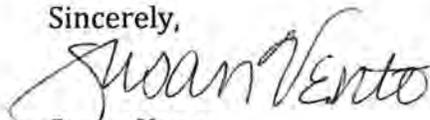
During the last eighteen months, I worked with a team of six fellow river advocates to create a documentary about the visionaries who saw a tremendous opportunity and worked tirelessly to create MNRRA, "Rebirth: The Mississippi's National Park." I invite you to view the documentary when you have an opportunity. You can view it at fmr.org/rebirth. I am certain you will be impressed by the determined and bipartisan effort to make this treasured section of the Mississippi a part of the National Park system a reality.

The Mississippi is a beautiful welcome mat to all who visit our Twin Cities communities and the State of Minnesota. It greets, it refreshes, it heals, it renews.

I truly hope and pray that your priority in your work will be to ensure the future of this welcome mat as a pristine and protected treasure that will delight and revitalize future generations.

Thank you very much for your consideration of my comments.

Sincerely,



Susan Vento

July 6 2016

Dear Judge Lipman

Please accept this hand delivered letter to you re the MRCCA Rules. I tried to send several FAX's yesterday but was unsure of my success. If you did get FAX's from me please discard them and use the attached color copy version instead.

Thank you very much.

Sincerely

John N. Freiberg

ADMINISTRATIVE HEARINGS

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HEARINGS

John A. Freeburg
6356 Riverdale Dr.
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July 5, 2016

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HEARINGS

Administrative Law Judge Eric L. Lipman
600 North Robert St.
St. Paul, MN 55164
Fax 651-539-0310

Dear Judge Lipman

Thank you very much for the chance to testify before you on June 15th at Greenhaven Event Center in Anoka regarding the proposed MRCCA rules. At that meeting I did submit to you a copy of the City of Ramsey City Council work session –special meeting notes of Nov. 10th 2015 which was conducted on my property and several neighboring properties. Please find the attached as further written comments from me regarding the rule making process.

As noted in the city council report I made several comments regarding the connection between the two upstream power plants and the erosion that I see occurring along the river banks in the City of Ramsey. In early Jan. of 2016 the outside temperature dropped to about -20F. The river began to freeze as it has for about the last forty years, first forming floating ice sheets and then a full coverage of ice over the entire river. This covering is very rough on the surface and shows signs of open water at times. As soon as this occurred the level of the water in the river rose about four feet overnight. I checked on my neighbor's property where we had previously measured the six foot undercut. The undercut area had been flooded by the rising water which had subsequently frozen. When the temperature rose to near zero or slightly above the flood level water suddenly receded and the ice layer on top collapsed taking with it soil, rocks and other shoreline material. This material then became part of the 5148 tons of sediment that goes into the river along the 5.8 miles of Mississippi River shoreline in the City of Ramsey. This loss was reported in the "City of Ramsey River Bank Condition Inventory" as prepared by the Anoka Conservation District for the City of Ramsey February 2016. I have included a summary of that report in this FAX to you. I also have many photographs of this event as it was occurring and would be happy to share them with any interested parties.

The landowners along the Mississippi River from the Coon Rapids Dam up to the city of Monticello have become the default flood control program for the river! I have pictures of my shoreline going back twenty or more years. These photos show that back some twenty years ago there was some vegetation growing along my river bank and near to the waterline. Over the past years that vegetation has been

ripped or washed away by the continuous and unnatural ice- up- and ice- out conditions we are now experiencing. This damage was slow at first and very hard to detect from year to year. But when viewed from the vantage point of before and after pictures spanning twenty years the huge amount of damage is clearly evident. This is backed up by the attached River Bank Condition Inventory report.

Please remember that this report shows that the City of Ramsey is losing 5148 tons of sediment per year into the flowing water. The report does not say how much this is costing landowners (both public and private) nor who is paying or not paying for this loss in shoreline material. I can tell you that the cost is very high and has been carried mostly by private landowners. Public landowners such as the city and county have suffered great loss but have for the most part not paid for repair. We riverbank landowners have a common neighbor known as the Federal Government. If you had a neighbor who was taking thousands of tons of soil, trees and other vegetation from your land every year I'll bet you would not be happy about it and would seek some kind of remedy. I have attached a copy of an article from the Anoka County Union Herald from Jan. 8th 2016 regarding the City of Ramsey support for a shoreline study. I have also included a larger image of the photo in that article. The Trees that you see along the shoreline did not grow there nor are they protecting the shoreline from erosion! Those trees were in the recent past at the top of the bluff but because of erosion they made the forty foot slide down into the river and will soon never be seen again. They will become part of the ever increasing silt deposit in Lake Pepin or part of the dead zone in the Gulf of Mexico. The trees and soil currently on the top of the bluff will soon be joining them. If you only see this scene only once a year, or maybe never, then you might assume that this is a perfectly natural scene. However if you see this scene many times a year from early spring to late fall then you begin to realize that this is a picture of a dynamic process and has been ongoing for the last several decades. This happens to be the shoreline of the Anoka County Mississippi River West Regional Park, or rather what's left of it.

One of my upstream neighbors was recently contemplating selling his house. When he moved in about twenty years ago he had a stairway put in from the top of his bluff to the shoreline. At that time you could come off the last step of the stairs and put your foot on the shoreline eight inches below. When my neighbor had a real-estate person examine his property he was told that he should fix the now nearly two foot vertical gap between the last step and the shoreline in order to make the property more salable. My neighbor did this but only this. He did not try to fix the overall shoreline erosion problem. This minimal repair cost nearly \$20,000 and involved the placement of only about 20 tons of riprap. Again this was a stopgap repair not a shoreline reconstruction. Due to the very steep slope of my neighbors bluff further repairs would have done more damage to the bluff than would be acceptable. This event does however raise the question of could future water front property values and or assessments be affected by the condition of the shoreline or access to it.

This brings up another point that was mentioned by another upstream neighbor at the Greenhaven meeting. In order to repair the current level of damage to many of the existing properties the only feasible approach would be to mine rocks from the river and place them on the affected properties. This environmentally friendly approach could be paid for by contributions from those involved in the situation. I believe that this would include the US Government, Xcel Energy, The State of Minnesota, Anoka County, The City of Ramsey and private landowners. All of these parties have a responsibility and

a duty to offer up an immediate solution to the erosion problem before we lose another hundred thousand tons of shoreline material. Many private landowners do not have the financial resources necessary (several hundred thousand dollars) to properly repair the damage that has occurred over the last thirty to forty years. Cost sharing among involved parties is the only feasible approach.

Over the past several years the Minnesota DNR has been in the process of updating and refining the rules and regulations regarding the use and care of the upper Mississippi River. Their first attempt several years ago drew considerable concern from property owners along this part of the river, both public and private. I have attended many meetings and discussions on this topic hosted by many organizations, both public and private. What I learned from these meetings was that the people living close to or on the river were somewhat aghast at the proposals put forward by the DNR to refine the then current rules and regulation governing the river. One of the most common thoughts I heard expressed regarding erosion control was "what are these people thinking". It finally occurred to me that the DNR staff does most of their river survey work during the summer months when most of the erosion damage is covered by overhanging vegetation as opposed to imbedded shoreline vegetation leaving the impression that erosion is not a real problem. This is why I asked the Ramsey city people to view my neighborhood shoreline in the late fall when most of the obscuring vegetation is gone. Most of those who attended said that they learned something about the local erosion problem. This happened to be a cool but sunny day and most of the people attending were happy to get back indoors.

After that visit I decided to pay more attention to the action on the river during the winter months. I have bird feeders along my bluff and fill them daily. Sure enough in early January of 2016 we had a cold snap that reached minus 20F. As the river has done for the last 26 years that I have lived here the ice sheets started forming one day and on the next day the river was for the most part frozen over and the water level had risen about four feet from the day before. A few days later when the warmup arrived the water level suddenly dropped and the ice shelf that had formed on top of the flood level suddenly collapsed taking with it much soil, rocks and vegetation. At this point in time the shoreline is almost impossible to view because of the large sheets of ice covering the shoreline area. I have on my property a set of steps going down to the river which are slightly above the ice shelf and allowing me to view the scene at close hand. Several of my neighbors have the same situation, and I observed their shorelines as well. This is when I realized the extent and magnitude of the damage to the area. I did not encounter any DNR staff making any similar observations.

In many conversations with my neighbors and others in the area that have lived on or have observed the river for the past forty years or more, the above events are not considered to be "normal or natural". Most everyone I spoke with can remember when the river froze over nearly smooth and allowed for snowmobiling and ice fishing or spearing shacks. The flooding did not occur. In my comments in the city council minutes I thought that the flooding was the result of a rock ridge line about a half a mile down-stream from me. During this past winters events I checked downstream all the way to where Third Ave So. in Anoka meets the river, the water level there had also been up about four feet and had a similar collapsed ice shelf along the shoreline which prevented close observation of the event. This makes me believe that the flooding starts at the Coon Rapids Dam, due to ice sheet build up on the

upstream side, and not at the local rock ridge line. I did however photograph most of my observations and will gladly share them with any interested party.

I am writing this at this time because I now have the hindsight of several years of observations that were prompted by my own thoughts of "what are these people thinking". More than likely I would not have made all these observations and gone to all those meetings and talked with so many people had it not been for the actions that the DNR undertook several years that appeared to me and many others to be ill- informed and ill- advised.

I am now asking for the DNR to become more a part of the solution to the problem and soon, and to look more closely at not just erosion control such as "restoration of native vegetation and cedar tree revetment" which are doomed to failure on most steep bluffs due to the changed nature of the ice-in ice- out cycle. I would like to ask them to consider true erosion prevention other than shutting down the upstream power plants. I googled the phrase "river bank erosion and power plants" and got 442,000 hits. Maybe this would be a good place to start research on this subject. To accomplish this task would mean rip rap on as much of the affected shorelines as possible. And providing assistance in securing the permissions, equipment and financing deemed necessary to accomplish this task. Telling people to plant grass and trees on these affected shorelines is simply wrong and is a waste of precious time and money. The affected areas had natural vegetation on them before the power plants came in but that is now long gone and it will not be returning no matter how much the DNR hopes that it will. Most of the landowners whose properties are affected would like to see a permanent remedy, but lack either the financial resources or the access to the area or both in order to save their land from winding up in Lake Pepin or the Gulf of Mexico.

I will be distributing copies of this information to those referenced and other concerned parties.

Sincerely

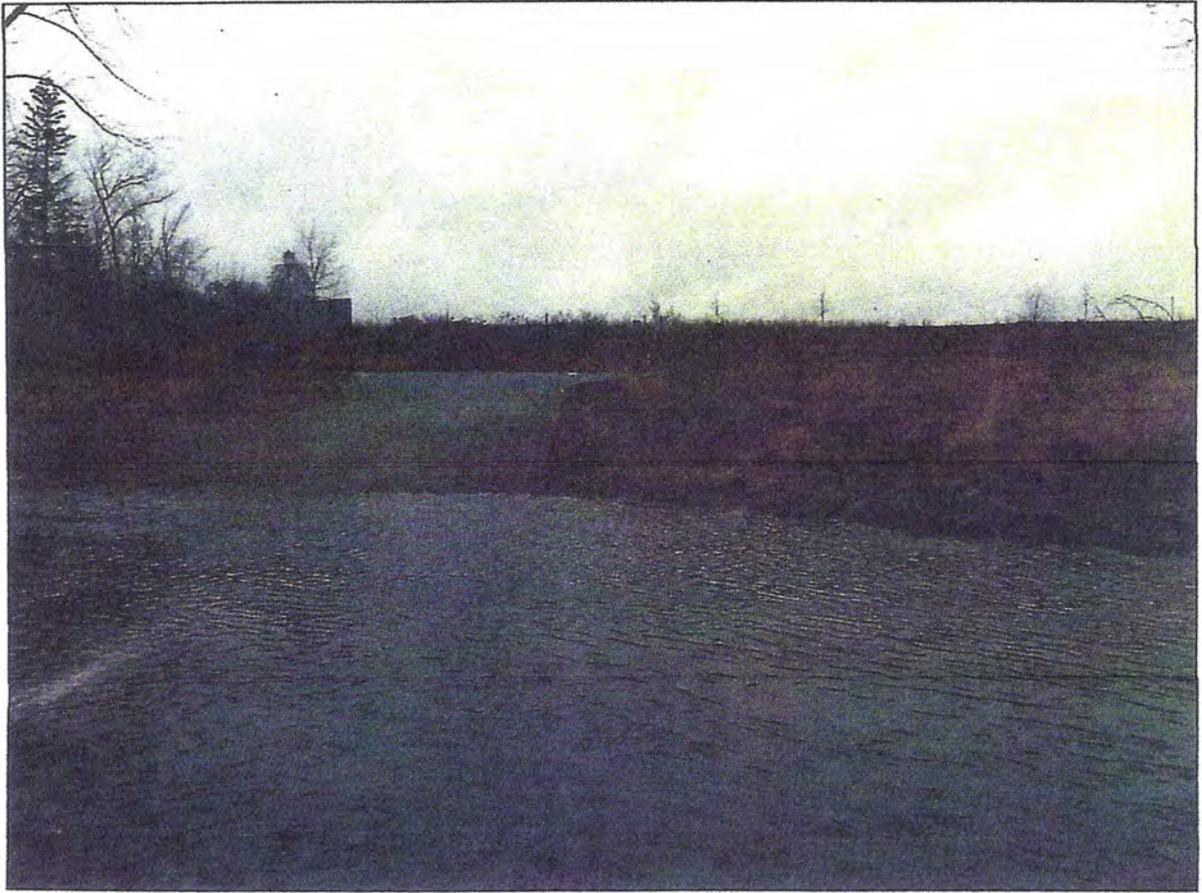
A handwritten signature in black ink that reads "John A. Freeburg". The signature is written in a cursive style with a large, looping flourish at the end.

John A. Freeburg

home 763-427-1528

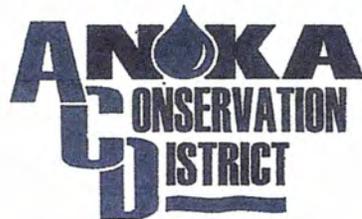
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City of Ramsey Mississippi River Bank Condition Inventory

Prepared by the



*for
the City of Ramsey
February 2016*

Table of Contents

Executive Summary.....	2
Methods.....	2
Field Work.....	2
Wisconsin NRCS Direct Volume Method – Bank Recession Rate Categorizations	2
Soil Loss Estimation.....	3
Atlas Generation	3
Results.....	4
Erosion Severity	4
Estimated Soil Loss.....	4
Stabilization Considerations.....	4
Possible Stabilization Approaches	5
Favorable Practices for Riverbank Property Owners	6
Site Profiles	7
How to Read Site Profiles	8
Appendix A.....	19
Atlas	19
Appendix B.....	93
Complete Soil Loss Estimation Table	93

List of Figures

Figure 1: Diagrams of variables used for soil loss estimation.....	3
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List of Tables

Table 1: Erosion severity categories.	3
Table 2: Summary of erosion severity.	4
Table 3: Severe and very severe erosion on public and private lands.....	4
Table 4: Estimated soil loss by erosion severity.....	4
Table 5: Summary of site profiles.	7
Table 6: Soil loss estimation details for each polyline categorized as severe or very severe.....	95

Executive Summary

The City of Ramsey contracted the Anoka Conservation District to complete an inventory of riverbank condition along the entire 5.8 miles of City that border the Mississippi River. The inventory provides the City with a comprehensive record of bank condition. Ten stretches of riverbank with severe or very severe erosion were identified, which if stabilized, would reduce sediment loading to the river by 5,148 tons per year.

The inventory is structured as this report as well as an atlas. The report provides details on the methodology used to estimate bank erosion severity and potential benefits provided by stabilizing the most severely eroding sections of riverbank. The 10 most severely eroding sections of riverbank are also detailed in the report with individual site profiles to highlight additional information and potential solutions. The atlas is presented in Appendix A and provides a complete record of aerial photographs with the corresponding erosion severity categorizations and key pictures collected during the field work portion of this effort. As not all pictures are presented in the atlas, the final deliverables also include the complete picture inventory collected in early December 2015.

Methods

Field Work

The project scope was determined to be the entire 5.8 miles of City that border the Mississippi River. An atlas of the target area was printed prior to conducting the field work to serve as a navigation tool on the river and ensure complete coverage of the riverbank.

The inventory was conducted on December 10th and 11th, 2015. The timing was optimal because the river level was relatively low, bank vegetation was dormant, and snow had not yet fallen to obscure the bank. Other times of the year were considered for the inventory, but frequent high water levels in the spring, dense bank vegetation in the summer, and river ice and snow on the bank in the winter all prevented the collection of a useful picture inventory.

The inventory crew consisted of two Anoka Conservation District (ACD) staff members. A small boat was used to navigate the river and take geotagged pictures using a handheld GPS. These pictures can be viewed similar to pictures taken on a standard camera, but they also contain spatial information (i.e. X and Y coordinates). This feature allows them to be accurately mapped in GIS software. In order to take high quality photos, the boat navigated at idle speed typically between 50 and 100 feet from shore depending on water depth.

Wisconsin NRCS Direct Volume Method – Bank Recession Rate Categorizations

The picture inventory was used to digitize a polyline in GIS along the entire riverbank. Using the Wisconsin NRCS Direct Volume Method, the polyline was classified as slight, moderate, severe, or very severe with respect to erosion severity (Table 1). These erosion categorizations were then converted to lateral recession rates using the table below for use in soil loss calculations.

Table 1: Erosion severity categories.

Symbol	Category	Lateral Recession Rate (ft/yr)	Description
	Slight	0.01—0.05	Some bare bank but active erosion not readily apparent. Some rills but no vegetative overhang. No exposed tree roots.
	Moderate	0.06—0.2	Bank is predominantly bare with some rills and vegetative overhang. Some exposed tree roots but no slumps or slips.
	Severe	0.3—0.5	Bank is bare with rills and severe vegetative overhang. Many exposed tree roots and some fallen trees and slumps or slips. Some changes in cultural features such as fence corners missing and realignment of roads or trails. Channel cross section becomes U-shaped as opposed to V-shaped.
	Very Severe	>0.5	Bank is bare with gullies and severe vegetative overhang. Many fallen trees, drains, and culverts eroding out and changes in cultural features as above. Massive slips and washouts common. Channel cross section is U-shaped and stream course may be meandering.

Soil Loss Estimation

Any section of riverbank identified as either severe or very severe was included in a site profile for more detailed analysis. The analysis consisted of calculating the following variables for every section of severe or very severe erosion (Appendix B).

- **Depth (D)**: horizontal distance from the toe to the top of the bank; calculated using GIS
- **Height (H)**: vertical height; measured with November 2011 LiDAR elevation data using GIS
- **Slope Length (SL)**: length of diagonal slope; calculated using depth and height measurements
- **Recession Rate (RR)**: annual lateral recession of bank (0.4 ft/yr for severe erosion and 0.75 ft/yr for very severe erosion)
- **Length (L)**: length of the erosion along the river; calculated using GIS

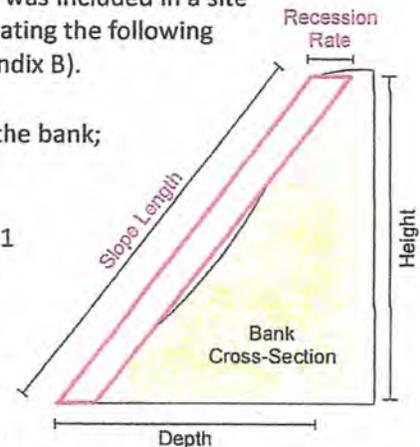


Figure 1: Diagrams of variables used for soil loss estimation.

These variables (Figure 1) were used in the equation below to estimate the annual soil loss. Sandy soil weighs approximately 100 pounds per cubic foot.

$$\frac{SL(ft) * RR(ft/yr) * L(ft) * 100(lb/ft^3)}{2000(lb/ton)} = \text{Estimated Soil Loss (tons/year)} \quad \text{Equation 1}$$

Atlas Generation

All of this information was used to create an inventory atlas of the pool which can be found in Appendix A. The atlas contains erosion severity and photos of the shoreline.

Results

Erosion Severity

Most of the riverbank inventoried had limited erosion (Table 2). Approximately 78% of the riverbank was categorized as either slight (40%) or moderate (38%) erosion severity. This corresponds to a lateral recession rate of 0.0 – 0.2 ft/yr.

In contrast, 11% of the shoreline was categorized as severe and 10% as very severe (Table 2). These categories have lateral recession rates of 0.3 – >0.5 ft/yr.

Overall, shoreline categorized as either severe or very severe is distributed relatively evenly between public and private ownership (51% and 49%, respectively). However, when looking at the severe and very severe categories individually, the breakdown is not as evenly balanced (Table 3). Public land has a lower percentage of the total severe sections (42%) and a higher percentage of the total very severe sections (61%).

Table 3: Severe and very severe erosion on public and private lands.

Ownership	Severe		Very Severe	
	Length (ft)	%	Length (ft)	%
Public	0.27	42%	0.37	61%
Private	0.37	58%	0.24	39%
Total	0.64	100%	0.60	100%

Estimated Soil Loss

The total length of riverbank categorized with severe or very severe erosion is relatively equal between the two categories

Table 4: Estimated soil loss by erosion severity.

Erosion Severity	Length (ft)	Estimated Soil Loss (tons/yr)	%
Severe	0.64	1174	23%
Very Severe	0.60	3974	77%
Total	1.24	5148	100%

(Table 4). However, because of the higher lateral recession rate in the very severe sections (i.e. 0.75 ft/yr), those sections represent the majority (77%) of the estimated soil loss.

Stabilization Considerations

The goal of most riverbank projects is to correct or prevent excessive erosion or undercutting through bank stabilization. Stabilization of eroding riverbanks is highly site-specific; there is not a simple solution that can be applied across all sites. For example, factors such as position along the river (e.g. outside bend), river dynamics (e.g. flow and flood elevations), and site accessibility must be considered individually for each project. That being said, stabilization approaches generally fall into two categories: hard armoring and bioengineering.

Hard armoring uses physical structures to protect the riverbank; riprap is used commonly for hard armoring. Riprap does not necessarily need to extend to the top of the slope to be effective and can be inter-planted with native species to soften its appearance. Often times, hard armoring the toe of the slope (i.e. the very bottom) up to a moderate height (e.g. the 2-year flood elevation) is sufficient for stabilizing the rest of the bank.

Table 2: Summary of erosion severity.

Erosion Severity	Length (miles)	%
Slight	2.32	40%
Moderate	2.21	38%
Severe	0.64	11%
Very Severe	0.60	10%
Total	5.78	100%

Bioengineering approaches combine engineering techniques with ecological principles to stabilize the bank. They rely heavily on deep-rooted native plants along with a variety of other natural materials to reinforce and stabilize eroding riverbanks. Bioengineering also incorporates the goals of fish and wildlife habitat restoration, maintenance of water quality, and aesthetic considerations. In addition to bank stabilization, many benefits are achieved through bioengineering:

- Improved aquatic and terrestrial habitat,
- Increased connectivity among habitats along the riverbank,
- Decreased water temperatures through shading, and
- Improved soil and water quality.

The stabilization solution for an eroding riverbank could certainly use a combination of hard armoring and bioengineering. In fact, ACD often recommends this combination on large river systems such as the Mississippi River because of the benefits provided by both approaches.

Possible Stabilization Approaches

Stabilization of riverbanks can be achieved through many different approaches. Below is a list of some common stabilization approaches (both bioengineering and hard armoring) to correct erosion issues. Again, a combination of approaches is often specified as the most effective solution.

- Restoration of Native Vegetation – Deep-rooted, native vegetation creates a buffer along the riverbank that can provide stabilization and minimize erosion. Furthermore, if the bank is damaged, the vegetation has the ability to self-heal with additional growth.
- Cedar Tree Revetment – Anchoring Eastern Red Cedar trees to the toe of the slope reduces water velocities near the bank to protect against erosion. Furthermore, the reduced water velocities promote sedimentation and can actually help rebuild the bank. This provides a cost-effective bioengineering option for moderate to severely eroding riverbanks.
- Live Staking – Dormant, live stakes of native species (e.g. Sandbar Willow) can be installed to establish a dense plant community with high stem density that will stabilize the riverbank.
- Hard Armoring – Hard armoring of the bank may be necessary along riverbanks on large systems that experience the greatest erosive forces (e.g. outside bends). However, it is often not necessary to hard armor the entire bank from the toe of the slope to the top of the bank. Rather, the hard armoring can extend to a predetermined elevation (e.g. 2-year or 5-year flood elevation), above which could be stabilized using the establishment of native vegetation. Furthermore, the sections that are hard armored can often be live staked to provide additional stabilization value, wildlife habitat, and improved shoreline aesthetics.



- **Bank Reshaping** – Reshaping a severely eroding riverbank may be necessary in order to stabilize vertical, bare banks. This approach must be coupled with other stabilization techniques because in and of itself it does not provide any stabilization benefits. It only creates a bank with suitable slopes for other stabilization approaches.

Favorable Practices for Riverbank Property Owners

Managing a riverbank can present a difficult challenge for property owners. Often times, a misunderstanding of factors that contribute to erosion can actually exacerbate the issue. Below is a list of practices that should be followed by property owners adjacent to rivers in order to minimize erosion and protect their property.

- **Avoid mowing** near the edge of the bluff or riverbank. Turf grasses have very shallow root systems, providing little soil stability. Deeper rooted species are also better at filtering out excess nutrients and sediments in runoff.
- **Control runoff** from downspouts and other hard surfaces at the top of the slope to prevent it from flowing over the riverbank. Promote infiltration of rain water into the soil but away from the riverbank where possible, or provide a pipe conduit down to the water's edge to transport water if necessary.
- **Dispose of yard waste properly** to avoid smothering riverbank vegetation and contributing nutrients to the river, which commonly occurs when leaves and grass clippings are thrown over the riverbank.
- **Plant desirable species** with preference for multi-stemmed plants with deep, dense, fibrous root systems. However, ensure the species are well suited to the soil type, moisture level, and available sunlight or they will not thrive.
- **Prune lower branches** on trees to increase the amount of light that penetrates to the ground. This will increase plant growth at ground level where the stems, roots, and foliage will help keep soil in place.
- **Remove buckthorn**, which is an invasive plant that is believed to release a natural herbicide that suppresses nearby plant growth.
- **Remove fallen trees** because they can redirect water toward the bank and exacerbate erosive river forces.
- **Remove grapevines**, which smother trees, shade out understory species, and provide little soil stabilization benefits.

Anoka County Union Jan 8 2016

Ramsey supports study of erosion along Mississippi River's banks

By Eric Hagen
Staff Writer

The city of Ramsey is working on a project to research shoreland erosion issues along the north bank of the Mississippi River.

The Ramsey City Council Dec. 8 unanimously approved a plan for the city to work with the Anoka Conservation District to survey all Ramsey properties along the Mississippi River to look for erosion problems and identify solutions through erosion stabilization projects.

The study will cost \$5,000.. Community Development Director Tim Gladhill said Anoka County Parks expressed willingness to be a partner since it wants to better un-



The Ramsey City Council approved an erosion study for its side of the Mississippi River.

Courtesy of city of Ramsey

derstand erosion issues at Mississippi West Regional Park. But how much the county contributes finan-

cially to this study has not been settled.

City Administrator Kurt Ulrich said this study

would be helpful when the city is seeking grants to help pay for shoreland stabilization projects.

Council Member Chris Riley asked if the city owns any land along the river. Gladhill said he is not sure if the city holds any fee titles on properties along the Mississippi River, but noted the city does have easement for the trail and has some areas designated for future parks.

"So if we pay for this, it's a service for individual residents?" Riley asked.

Gladhill responded, "Yes, this would fall under that category of trying to provide a service for our residents to respond to some concerns that were brought to our attention."

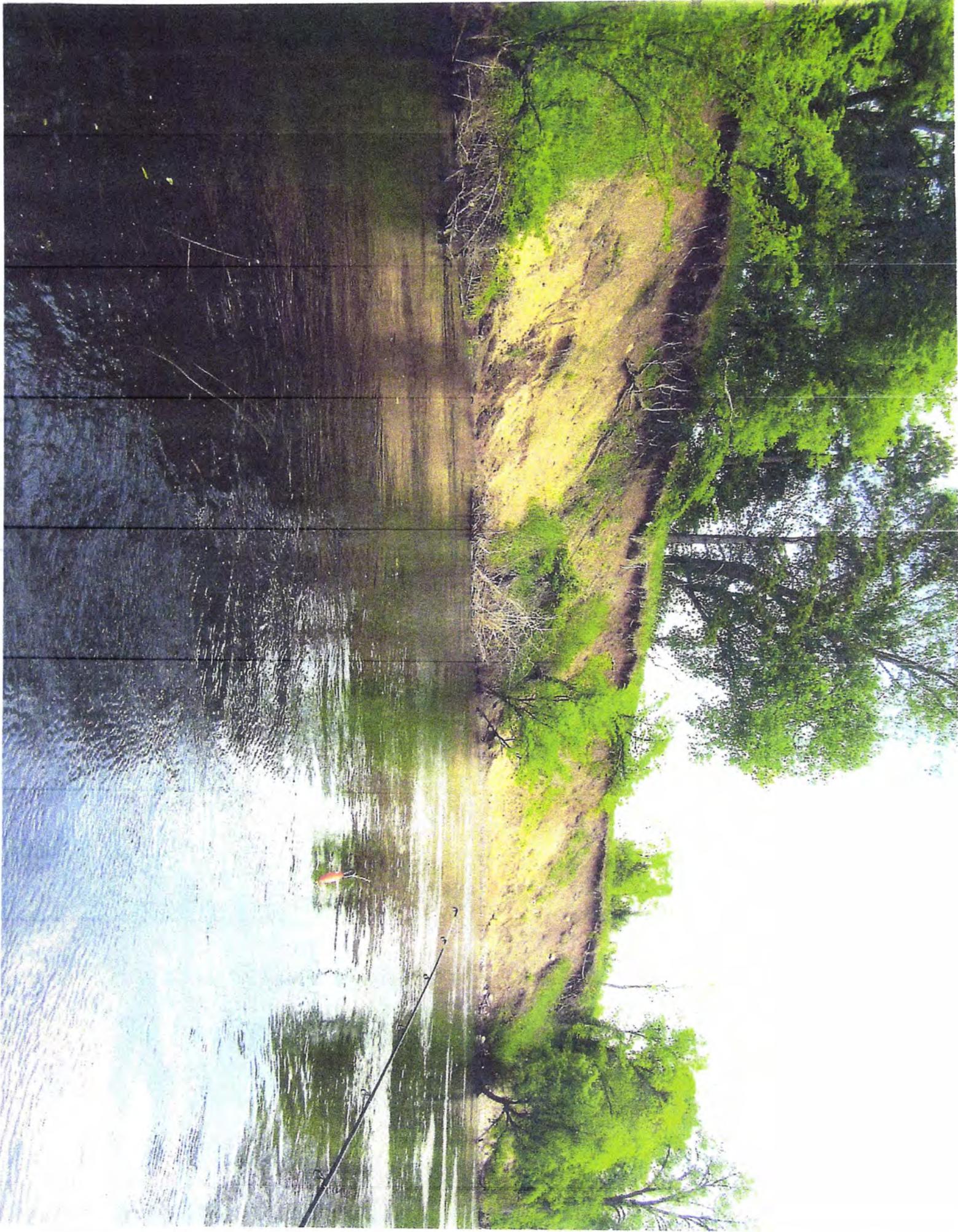
Mayor Sarah Strommen added that more than these homeowners along the river will ultimately benefit. When she was on a tour of several proper-

ties, she saw "significant bank erosion" and said in some cases the erosion was caused by geography and the landowner was not at fault.

"There is a public cost that gets paid when those banks are falling into the river, so I think this is a small contribution to leverage all of the funds that are available to try to address this problem that in one way shape or form we all pay for at the end of the day," Strommen said.

Gladhill said when there is shoreland erosion, there are issues with water quality from sediments falling in the river, so he agreed there is a broader public benefit to fixing shoreland erosion.

eric.hagen@ecm-inc.com



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ADMINISTRATIVE HEARINGS

Tom Dimond
2119 Skyway Drive
Saint Paul, MN 55119

JUL 06 2016

July 6, 2016

REC'D AT LOBBY DESK

RE: MRCCA Bluff Comments - R-4240

The maps I previously submitted that are produced by the DNR and the actual survey of bluffs in Highwood demonstrate that the DNR analysis in the SONAR are not correct.

The DNR states on page 24 - the proposed bluff definition in the proposed MRCCA rules was premised on minimizing the creation of *new* nonconforming structures. Figure 4 does not demonstrate this claim. Figure 4 demonstrates the DNR proposed bluff definition removes current protections and eliminates *existing* nonconforming structures. The 2009 bluff definition that was used for analysis is actually less protective than the bluff definition in Executive Orders 130 and 79-19. The Executive Order is based on 18% slope measured over a 50 foot horizontal distance or 9 foot rise. The 2009 definition was an effort to weaken the bluff protections by requiring a 10 foot rise. When the 2009 definition was removed it reverted to the more protective original 9 foot rise definition.

The DNR states on page 24 - the proposed MRCCA rules have a dual goal of protecting sensitive bluffs and minimizing the creation of new nonconforming structures. The statutory purpose and standards call for the protection or enhancement of bluffs, and very steep slopes. The authorizing legislation does not call for protection or enhancement of key resources unless it creates a nonconformity. Reducing nonconformities by reducing the protection of key resources defined in statute is in direct conflict with the authorizing language in MN Stat. 116G.15. The enabling legislation does not have a dual goal of bluff protection versus nonconforming structures. The statute states that the rules must be consistent with residential nonconformity provisions under sections 394.36 and 462.357. Both of these statutes are compatible with the statutory requirement that bluffs and very steep slopes *must* be protected or enhanced by the guidelines and standards. The protections or enhancement of very steep slopes has been completely eliminated from the proposed rules and bluff protections have been significantly reduced in spite of the legislative mandate to protect and enhance them.

The DNR claims on page 24 - the proposed rules retain the 18% slopes definition from E.O. 79-19 because it is a standard widely adopted by local governments. This is not factually correct. The proposed rules require a minimum 100% slope to be classified a bluff. A 25 foot rise over a 25 foot horizontal distance is a 100% slope requirement. This is an indisputable fact.

Existing protections that have been in place for 40 years protect all 18% slopes from development. Current protections call for 18% and greater slopes to remain in their natural state. The previously attached letter from MN DNR staff Sandy Fecht recites this point multiple times. These protections are contained in Executive Orders 130 and 79-19. Figure 4 on SONAR page 24 illustrates that areas of 18% slopes (in purple) that are contiguous parts of the proposed bluff (green) would no longer be protected. This is in direct conflict with existing protections and the statutory requirements to protect bluffs and very steep slopes. Bluffs and very steep slopes are

18% and greater slopes. The SONAR actually documents how the DNR is not in compliance with the statutory requirements.

The maps I submitted show how bluffs near the Regional DNR headquarters have gaps that should not exist. Even a casual observer would not suggest there are multiple tops of bluffs and base of bluffs in these locations. The actual survey done in Highwood illustrates that the proposed rules do not protect or enhance 18% and greater slopes because the proposed rules drop out sections of the bluff that are contiguous. This problem is largely due to requiring a 100% slope segment and eliminating averaging by eliminating the use of percentage slope over a 50 foot or greater horizontal distance.

The DNR has provided no rationale in the SONAR on how making these reductions in current protections protects and enhances the key resources of bluffs, and very steep slopes.

CORDELIA S.C. PIERSON
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July 6, 2016

ADMINISTRATIVE HEARINGS

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
St. Paul, MN 55164-0620

JUL 06 2016

REC'D AT LOBBY DESK

Dear Judge Eric L. Lipman:

Thank you for the opportunity to comment on the proposed rules for the Mississippi River Corridor Critical Area (MRCCA).

Rulemaking for the MRCCA will shape the future of our Mississippi River communities, helping each of us contribute to a healthier, cleaner, more vibrant region along our internationally renowned Mississippi River. These rules will provide community stakeholders with essential tools to ensure our Mississippi River is protected and enhanced for future generations. Thank you for welcoming citizen comment on these proposed rules.

Why I am commenting and asking for specific changes:

While I am submitting these comments as an individual, I serve in an elected and official capacity with organizations related to the Mississippi River. I serve as the elected regional commissioner on the Mississippi River Parkway Commission for the Elk River - Hastings district of the Great River Road, a National Scenic Byway. I serve as a director and the Environment Committee chair on the board of the Marcy-Holmes Neighborhood Association, a Mississippi River neighborhood in Minneapolis that includes the Stone Arch Bridge and St. Anthony Main.

I chose to work and raise a family in the Twin Cities region because our region's economy, civic engagement, commitment to education and environmental quality are all outstanding. I chose to live in my Mississippi River neighborhood because we have a natural sanctuary with wildlife - mink, beavers, many heron and water birds - within view of downtown Minneapolis's high rises and a world-class university.

As a neighborhood leader and engaged citizen, I have supported riverfront development that has drawn new residents to the heart of Minneapolis. I also see untreated stormwater scouring the fragile bluffs, and have given hundreds of hours to advocate for better development design through our city's review process. I see many great opportunities for us to improve our critical river area by through clearer standards for development design, addressing vegetation and water quality. With more intense storms and habitat stress from climate change, these rules are even more important to shape a resilient Mississippi River corridor critical area.

I am choosing to comment today because these rules will shape the future of our region, decision by decision, and my comments may help the rules reflect the perspective of everyday

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citizens committed to working with public and private partners for a healthier region along our Mississippi.

Overall Support for MRCCA Rules, with Suggestions for Improving the Rules:

The proposed rules are a big step forward for river protection – and will be even stronger with some key changes.

District in Minneapolis between Main Street (St. Anthony Main) and the Mississippi River:
Urban Mixed, not Urban Core:

Because the newly defined districts will provide greater guidance and will require significant process to change, a key change should be made before rule approval to reflect public agency and community support for riverfront protection in the Stone Arch Bridge – East bank area. The district map should be updated to assign this specific area as Urban Mixed instead of Urban Core: approximately one mile along the Mississippi River from East Hennepin Avenue to Bridge 9, and between Main Street SE and the Mississippi River.

- Some, but not all, of this area is part of the St. Anthony Falls Heritage Zone, and the historic district design guidelines would not be able to protect natural and scenic assets in this area.
- This area is included within the regional park boundaries described in the Minneapolis Park and Recreation Board's recently approved Central Mississippi Regional Park plan. Applying Urban Core status to this area conflicts with shared goals to protect and restore this area.
- This area is treated in adopted city plans very differently from the proposed Urban Core area between Main Street and University Avenue. Tall buildings in this sensitive area would wall off the river from public views, conflict with plans for open space protection and restoration, and negatively impact historic structures nearby – like the National Historic Landmark Pillsbury A Mill. 6106.0100

DNR Rules Should Strengthen Public Notification Provisions:

Significant changes to the critical area include local plan and ordinance amendments, district boundary change proposals and other local discretionary actions. The DNR should provide notification to the public when significant changes are proposed to ensure these decisions are coordinated in a consistent way and all stakeholders have an opportunity to shape these decisions. It is not enough to rely on local governments to provide notification to the public when significant changes are proposed in the Critical Area, our local national park unit and national scenic byway.

The notice period for the local government to contact the DNR, National Park Service and adjacent governments before public hearings should be 30 days, not 10 days, to provide adequate time for review. The Mississippi River Parkway Commission should be added to the list of parties, and the Great River Road Comprehensive Management Plan should be added to the list of "incorporations by reference." 6106.0060 supb. 7; 6106.0090

DNR Rules Provide Clear Guidelines and Flexibility:

All cities and townships governing land within this nationally significant river corridor should be required to comply with the minimum standards for corridor protection set by the state

Critical Area rules. In fact, local decision-makers are able to make tough decisions to protect and enhance the riverfront when state rules provide clear guidelines.

The proposed rules, requiring "consistency," will ensure clearer implementation of these rules in local ordinances. **6106.0060 subp. 3** The provisions for "flexibility" are more likely to protect critical area values than in earlier drafts. **6106.0070 subp. 6** The standards for variances and nonconformities, and requirements for findings and evidence are vital to protect critical area values. **6106.0080** For conditional use permits, the rules can reference techniques for local governments to minimize impacts on public river corridor views. The proportionality requirement for mitigation is very helpful.

Nonconforming structures that lie between Main Street SE and the Mississippi River in Minneapolis and that affect public views of the river should be subject to greater controls than nonconforming structures that less directly impact the riverfront experience. For example, expanding a nonconforming billboard in the river corridor should not be allowed, while restoring an historic building would be welcome.

DNR Rules Should Maintain and Strengthen Scenic Protections:

As a 75-year old national scenic byway and 25-year old national park unit, the Mississippi River corridor in the Twin Cities area provides striking scenic assets that distinguish our region from other major metropolitan areas. Minneapolis's convention and visitors association has even adopted the tagline "City By Nature," recognizing the economic and tourism benefits from our Mississippi River corridor.

The provisions in the draft rules for protecting natural and scenic landscapes should be equal to or stronger than previous drafts. Specifically,

- The dimensional standards for height are appropriately protective. **6106.0120**
- Vegetative screening requirements should be maintained and bolstered; defining "readily visible" is very helpful. **6106.0150**
- The permit system for vegetation management is a great and very important improvement. **6106.0150**

The provision about private signs needs to clarify "not be readily visible" from the river. MNDOT can coordinate with the DNR about signage rules, in accordance with National Scenic Byway guidelines and the Highway Beautification Act. **6106.0140**

DNR Rules Should Maintain Open Space Protections:

Maintaining open space protects important native habitat along this international migratory corridor as well as provides public access to the Mississippi River and surrounding land. Dedication of lands within the Critical Area serves many public purposes, and the proposed language stating that local governments "must encourage" dedication within the Critical Area is very important.

The proposed rules require open space dedication for new subdivisions within the Critical Area, but only on sites of 20 acres or more off the river, and 10 acres or more adjacent to the river. This minimum acreage could leave out important riverfront sites. **6106.0170**

In the Urban Mixed (UM) and River Towns and Crossings districts, the threshold for requiring open space dedication for river-adjacent land should be 6 acres, not 10 acres, for these reasons:

- Current parcel size: Most of the parcels in these districts are smaller than 10 acres. The current high threshold would result in few additions to river-adjacent open space.
- Development potential: Much of the land within the UM will undergo redevelopment in the next 20 years. Public access to the river will be needed to support growing numbers of urban residents and visitors.
- Public purpose of River Critical Area: The statute requires these resources to be protected. The benefits to property values, scenic enhancement and ecological health will last for generations, and are clearly worth the effort by local governments to monitor and enforce this open space dedication.

Closing:

I urge you to approve the proposed rules, and consider making them more protective in these areas.

Our national rivers can't protect themselves. Local communities and stakeholders rely on clear rules to help us achieve long-term goals for our Mississippi River and our region. Together, our river and our communities need far-sighted, common sense rules to preserve this precious legacy for future generations.

Thank you for considering my support for the proposed rules and these specific changes.

Cordelia Pierson

Cordelia Pierson

Commissioner, Mississippi River Parkway Commission

Board member, Marcy-Holmes Neighborhood Association

Chair, Environment Committee, Marcy-Holmes Neighborhood Association

cc: Senator Kari Dziejcz
Rep. Phyllis Kahn
Rep. Sheldon Johnson, Chair, Mississippi River Parkway Commission
Mayor Betsy Hodges
Council President Barbara Johnson
Council Member Lisa Bender, Chair, Zoning and Planning Committee
Council Member Jacob Frey
CPED Director of Long-Range Planning Kjersti Monson
MPRB President Liz Wielinski
MWMO Director Doug Snyder
NPS Superintendent John Anfinson
MHS Director and St. Anthony Falls Heritage Board Chair Steve Elliott
NIEBNA Chair Victor Grambsch
MHNA President Jan Morse
Daniel Petrik, Department of Natural Resources



Working to protect the Mississippi River
and its watershed in the Twin Cities area.

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July 6, 2016

ADMINISTRATIVE HEARINGS

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

JUL 06 2016

REC'D AT LOBBY DESK

Dear Judge Lipman,

Thank you for the opportunity to testify before you about the proposed rules for the Mississippi River Corridor Critical Area (MRCCA) on June 14 and June 16, 2016. The purpose of this letter is to provide you with our written comments, which offer a more detailed analysis of the rules, and include the items we summarized during our oral testimony.

Friends of the Mississippi River (FMR) is a citizen-based nonprofit organization that works with community stakeholders to protect, restore and enhance the Mississippi River and its watershed in the Twin Cities Region. Our work focuses on protecting and restoring riverfront land, improving water quality and the health of our rivers and streams, advocating for land use along the river that will enhance and celebrate our National Park, and engaging youth and adults in river education and volunteer programs. We have the support of 2,600 members. Last year we engaged more than 7,000 volunteers and participants in education and hands-on stewardship activities to connect to and restore the health of the river.

INTRODUCTION AND OVERVIEW

Friends of the Mississippi River's standing in the MRCCA rulemaking process

FMR has a long history of involvement with both the National Park Service and the DNR Critical Areas Program. A summary of our involvement is warranted to demonstrate that our organization has standing to engage in this rulemaking process, as well as river protection expertise to contribute.

- When the Mississippi National River and Recreation Area (MNRRA) was established in 1988, a MNRRA Commission of local leaders was charged with developing the first comprehensive plan for the new National Park. Several members of the commission decided to independently create Friends of the Mississippi River to bring a citizen perspective to the many public decisions that will guide development within the MNRRA corridor.

- Since we were established in 1993, FMR has worked in partnership with MNRRA and many other stakeholders to play a constructive role in issues of river corridor land use, economic development, park planning and natural area restoration.
- In 2004, we began to identify concerns about the existing MRCCA framework, Executive Order 79-19. The Executive Order is vague, outdated and does not carry the weight of rules. As a result, enforcement at the local level was both inconsistent and many times insufficient to adequately protect the resource. Many of the concerns we raised at that time about the efficacy of Executive Order 79-19 to protect the unique resources of the river are also identified in the SONAR for these proposed MRCCA rules.
- In 2007, DNR was charged by the Legislature to do a study of the MRCCA program, and FMR was contracted to conduct a series of stakeholder meetings for the study.
- After the DNR MRCCA report came out in 2008, FMR was asked to participate in a Legislative Study Group with other stakeholders. The outcome of that process was the decision to pursue rulemaking authority during the 2009 Legislative session.
- Once rulemaking commenced, FMR played an active role in the process in both 2010 and 2014. We attended stakeholder meetings and open houses, and submitted extensive written comments on the numerous drafts and revisions created. Because of our long-standing involvement in MRCCA, FMR staff are recognized as experts on MRCCA rules and regulations at the state and local level.

Significance of the Mississippi River Corridor in the Twin Cities

The Mississippi River is one of the world's great rivers with one of the most complex ecosystems on the planet. It is one of the defining features of the North American continent and is home to a diverse collection of wildlife and plant life. The Mississippi River sustains our home, our health and our heritage in numerous ways.

- The river is a source of drinking water for more than 18 million people.
- The river corridor is an international migration flyway used by 60% of all North American birds and 40% of its waterfowl
- The river is also home to several hundred other species, including mussels, amphibians, reptiles, mammals, and 25% of all North American fish species.
- The Mississippi River is 2,311 miles long and when the United States set out to establish a National Park to celebrate this great river, Congress chose the Twin Cities for its unique combination of natural, geologic and cultural features.
- The geomorphology of the river changes more through the Twin Cities than anywhere else on its entire length, providing dramatic landscape features such as waterfalls, bluffs, ravines, floodplains and islands.
- Many of the rare and remaining native plant communities in the Twin Cities are found along the Mississippi River. In addition to supporting a diversity of birds and wildlife, native prairies, wetlands, woodlands and forests are a part of Minnesota's Natural Heritage that should be preserved for current and future generations.
- As the birthplace of the Twin Cities, the Mississippi River has enormous historical, cultural and economic significance. Many sites along the river were and continue to be significant to Native Americans and much of Minnesota's rich agricultural and industrial past ties directly to the Mississippi River. Today the river is still a key transportation artery busy with commercial barges.

Purpose of the Mississippi River State Critical Area designation

Because of its unique natural, scenic, cultural, historical and recreational resources – shared community assets that improve Minnesota's economy and quality of life, the 72-mile Mississippi River Corridor in the Twin Cities was designated as a State Critical Area in 1976 and made permanent in 1979.

When MRCCA was established, it provided a framework to allow for economic development in the corridor, while ensuring protection the river's unique resources. Core to the Critical Areas Act framework was a partnership between state and local government to plan for and manage the river's resources. The goal has always been two-fold: to allow for growth and development within the corridor and to protect the unique and valuable resources.

Although the MRCCA has its own purpose statement in Minnesota Statutes 116G.15, it is worth noting that the overarching policy of the Critical Areas Act of 1973 also applies to MRCCA, as it does to all state critical areas.

From Minnesota Statutes §116G.02 POLICY:

“The legislature finds that the **development of certain areas** of the state possessing important historic, cultural, or esthetic values, or natural systems which perform functions of greater than local significance, **could result in irreversible damage to these resources**, decrease their value and utility for public purposes, or unreasonably endanger life and property. The legislature therefore determines that the state should identify these areas of critical concern and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.”

It is important to recognize that the purpose of any critical area designation is to ensure **development does not impair the historic, cultural, aesthetic values and natural systems of statewide significance**. This is the foundation of all critical areas, including MRCCA. The goal is to **allow for appropriate development**, but **only** if it does not negatively impact the significant resources of the river corridor.

Establishment of our National Park

The Mississippi River is 2,311 miles long and when Congress set out to establish a National Park to celebrate this great river, Congress chose this area for its unique combination of natural, geologic and cultural features. The Mississippi National River and Recreation Area (MNRRA) is a unit of the National Park System established by Congress in 1988, to protect, preserve and enhance the significant values of the waters and land of the Mississippi River corridor within the St. Paul-Minneapolis metropolitan area, and it is the only National Park whose mission is to celebrate the Mississippi River.

MNRRA is an unusual unit of the National Park Service, as there is very little land owned by the federal government and there are no federal regulations. Instead, MNRRA operates as a

“partnership park,” working with state and local government to collaboratively manage the river’s unique and significant resources.

Rather than creating its own regulatory tools, the National Park Service relies on state and local controls through the MRCCA. MNRRA has the exact same boundary as the MRCCA, and the Comprehensive Management Plan for MNRRA (1994) does not create another layer of government, but rather stresses the use of existing authorities and agencies to accomplish the policies and actions in the plan. For MNRRA’s unusual management structure to be effective, a strong state and federal partnership is essential.

The National Park Service has a vested interest in the successful implementation of MRCCA as a key tool to protect, preserve and enhance the river corridor. In 1991, when the MNRRA Comprehensive Plan was under development, Minnesota passed a law that included a promise to MNRRA to update the MRCCA standards.

From Minnesota Statutes §M.S. 116G.15, 1991

“The federal Mississippi National River and Recreation Area established pursuant to United States Code, title 16, section 460zz-2(k), is designated an area of critical concern in accordance with this chapter. The governor shall review the existing Mississippi river critical area plan and specify any additional standards and guidelines to affected communities in accordance with section 116G.06, subdivision 2, paragraph (b), clauses (3) and (4), needed to insure preservation of the area pending the completion of the federal plan.”

PROPOSED RULES ARE NEEDED AND REASONABLE

The proposed rules are both needed and reasonable. They are needed for two main reasons. 1) The current management framework is cumbersome and outdated, and 2) The unique river resources of national and statewide significance need minimum state standards to ensure the Mississippi National River is protected for current and future generations. The rules are reasonable because they will modernize the MRCCA management framework, and because DNR carefully considered the interests of local government units in the process of developing them. Although local cities will have to make some updates to their MRCCA plans and ordinances, it is not unreasonable to expect these standards to be updated more frequently, or for local plans to be updated along with comprehensive municipal planning updates scheduled for 2018.

Executive Order 79-19 needs to be updated

The existing framework of a 1979 Executive Order is problematic for a number of reasons, and several of the reasons cited below are included in the SONAR.

- The E.O. language is vague and outdated, leading to inconsistent application and, in some instances, poor resource protection.
- The districts in the E.O. are based on land use in 1979 and are unnecessarily broad. This creates a problem when cities want to redevelop or invest in these areas.

- As noted in the SONAR (29-35) the E.O. fails to define many key terms -- making implementation difficult for local governments, and causing confusion and costly, time consuming delay for affected interests.
- Because the E.O. does not carry the weight of rules, its credibility as an effective model has eroded over time, and some public officials choose to ignore it.
- It is difficult to change any of the existing standards when updates are needed. The E.O. itself cannot be amended and there is no provision to require periodic updates to MRCCA ordinances by local governments—in fact, many local MRCCA ordinances have not been updated in over 30 years.
- The intractable nature of the E.O. has led to inconsistencies between local plans and ordinances. After the National Park was established, a number of corridor cities did update their local MRCCA plans in the 1990s and 2000s, however very few went on to update their MRCCA ordinances to be consistent with their MRCCA plans as required by state law. As a result, local decisions about resource protection within MRCCA are often protracted and the land use and development decisions can be political or arbitrary.

State rules are needed to protect the Mississippi River and National Park

The Mississippi River Corridor Critical Area is a resource of regional, statewide and national significance that requires special management to retain its health and vitality.

- MRCCA is a shared resource that benefits many local communities, as well as the region and state. With 30 local units of government with land-use authority along the river, some over-arching guidelines and minimum standards are necessary to avoid a death by a thousand cuts — the steady degradation of the very qualities that make the Mississippi River such a treasure.
- Although the E.O. is problematic, the overarching approach of working in partnership has been established and should continue. The proposed rules are a revision and a refinement, but they do not alter the basic framework for protection that has existed since 1979. Local plans and ordinances that are consistent with state standards will continue to be required just as they have been for nearly 40 years.
- State rulemaking is the best way to modernize standards and guidelines for protection and enhancement of the Critical Area and National Park. These proposed rules will provide a management framework that is more consistent, predictable and effective.

State rules are reasonable, and provide a better management framework than E.O.

79-19

- New state rules for MRCCA will provide a set of clear, consistent and effective standards and guidelines to ensure the most valuable resources in the corridor are protected and preserved.
- This includes protecting steep slopes to prevent erosion, protecting scenic values by limiting structure height in areas where scenic values could be affected, and protecting the natural functions and values that make this one of the world's great rivers. The draft rules do a good job of protecting these resources while allowing for development, where appropriate.
- The proposed rules are considerably more nuanced and flexible than the E.O. standards. In many locations the proposed rules relax restrictions on development in ways that we believe will not degrade the river's resources. We believe the DNR has done a

commendable job of including flexibility provisions that will not needlessly restrict development when the resources would not be threatened.

- The old framework was dated, confusing and vague, and in some cases ignored or of limited influence. New rules will provide a more defensible framework.

STATUTORY AUTHORITY

The statutory authority for these MRCCA rules is clearly laid out in Chapter 116G. Minnesota Statutes 116G.01-116G.14 comprise the original Critical Areas Act of 1973. Minnesota Statutes 116G.15 codifies in law that MNRRA is a state critical area, and directs the DNR to establish districts and standards by state rule.

Discussion of Statutory Policy and Purpose

As noted above in the section about establishment of the National Park, the policy statement in 116G.02 is the overarching guidance for all critical areas.

From Minnesota Statutes §116G.02 POLICY:

“The legislature finds that the development of certain areas of the state possessing important **historic, cultural, or esthetic values, or natural systems** which perform functions of greater than local significance, could result in irreversible damage to these resources, decrease their value and utility for public purposes, or unreasonably endanger life and property. The legislature therefore determines that the state should identify these areas of critical concern and assist and cooperate with local units of government in the preparation of plans and regulations for the wise use of these areas.”

The purpose statement from 116G.15, Subd. 1 provides a more specific purpose that corresponds to the protection goals for the MRCCA.

Minn. Stat., §116G.15 MISSISSIPPI RIVER CORRIDOR CRITICAL AREA.

“Subdivision 1. Establishment; purpose. The federal Mississippi National River and Recreation Area established pursuant to United States Code, title 16, section 460zz-2(k), is designated an area of critical concern in accordance with this chapter. The purpose of the designation is to:

- (1) **protect and preserve the Mississippi River and adjacent lands** that the legislature finds to be unique and valuable state and regional resources for the benefit of the health, safety, and welfare of the citizens of the state, region, and nation;
- (2) **prevent and mitigate irreversible damages** to these state, regional, and natural resources;
- (3) **preserve and enhance the natural, aesthetic, cultural, and historical values** of the Mississippi River and adjacent lands for public use and benefit;
- (4) **protect and preserve** the Mississippi River as an essential element in **the national, state, and regional transportation, sewer and water, and recreational systems**; and
- (5) **protect and preserve the biological and ecological functions** of the

Mississippi River corridor.”

These purpose statements provide clear indisputable authority for the state to develop strong and protective standards and guidelines for managing the MRCCA. It is worth noting that these overarching policy statements demonstrate clear legislative intent that the natural, aesthetic, cultural, historical, recreational and transportation values and functions of the river are of the highest priority.

Under Administration in 116G.15 Subd. 2, the law directs the DNR to manage the river as a “multi-purpose resource...that provides for the continuation of development...where appropriate, within the Mississippi River Corridor.” The words “where appropriate” only appear in Subd. 2, clause (3), regarding development.

116G.15 Subd. 2. Administration; duties.

The commissioner shall work in consultation with the United States Army Corps of Engineers, the National Park Service, the Metropolitan Council, other agencies, and local units of government to ensure that the Mississippi River corridor critical area is managed as a multipurpose resource in a way that:

- (1) conserves the scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor;
- (2) maintains the river channel for transportation by providing and maintaining barging and fleeting areas in appropriate locations consistent with the character of the Mississippi River and riverfront;
- (3) provides for the continuation, development, and redevelopment of a variety of urban uses, including industrial and commercial uses, and recreational and residential uses, where appropriate, within the Mississippi River corridor;
- (4) utilizes certain reaches of the river as a source of water supply and as a receiving water for properly treated sewage, storm water, and industrial waste effluents; and
- (5) protects and preserves the biological and ecological functions of the corridor.

We raise this issue because several of the comments submitted make the argument that since the rules do not allow for development in some parts of the corridor (such as bluff impact zones and shore impact zones) they are not meeting the purpose of §116G.15 Subd. 2. (3), and are therefore not reasonable. This is a gross exaggeration. The legislative intent contained in the three aforementioned sections makes it clear that protecting development interests is not the primary purpose of these rules. Allowing for appropriate development means that it does not inappropriately impact river resources. Moreover, the Critical Areas Act was established with the express purpose of protecting significant resources from development, not vice versa.

Comments on DNR Process

The DNR has clear statutory authority to adopt these rules. In some places, FMR believes the rules should be more protective, and there are a number of things we have requested in previous comments that were not included, such as more stringent requirements for stormwater management. We feel the DNR was thoughtful and fair in their approach to balancing the many different interests and finding compromises. There have been ample opportunities to engage in the process in a meaningful way.

- The 2009 law directing the DNR to write rules was the culmination of many years of work by numerous citizens, environmental groups and other stakeholders. It passed with bi-partisan support in the Legislature and was signed by Governor Pawlenty.
- The MRCCA rule development process led by the DNR engaged hundreds of citizens and stakeholders, including extensive meetings with local cities and townships in the corridor, several open houses, opportunities to comment on several drafts and special meetings to bring opposing interests together to help DNR resolve differences.
- The partnership between MNRRA and MRCCA has created a workable framework for protecting the natural and cultural resources of the Mississippi River in the metro area, while enabling commercial, residential and industrial development consistent with those protections. The Executive Order has served well, but after almost 40 years, adjustments are needed. Rulemaking directed by the State Legislature is the right approach.
- The time has come for Minnesota to make good on it's promise to MNRRA to provide a state regulatory framework for our National Park on the Mississippi River.

REGULATORY ANALYSIS

The SONAR provides a solid regulatory analysis of the nine factors required by Minnesota Statutes §14.131; we offer some additional comments and perspectives in support of the DNR's conclusions.

1. A description of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule.

The DNR list of the persons and classes that will be affected by the proposed rule is thorough. The classes that will bear the costs of the proposed rule are mostly local units of government and property owners/developers, however, it is very important to note that these classes will also reap the benefits, such as increases in property values and economic development opportunities. No one questions that the river provides enormous benefits, and many cities tout the river and National Park as a source of great pride. Minimum standards will prevent degradation of resources that are essential to the economic success and livability enjoyed by our region, which in turn increases property values and economic development opportunities.

2. The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues.

The DNR has provided a thorough summary of potential costs to the DNR and other state agencies. It is worth noting that proper implementation of the rules might in some cases save costs because bluff failure will be less likely.

As an example, the construction of a new children's hospital on Riverside Avenue was a likely contributor to the recent landslide near the Washington Avenue Bridge. When the hospital was being built, Fairview Hospital made a contribution of \$10,000 to the neighborhood organization to mitigate potential impacts to nearby Riverside Park. Meanwhile, the Minneapolis Park and Recreation Board has been required to expend more than \$1 million to repair the bluff and parkway below. Costs like this are difficult to predict, but they can be prevented if bluff protections are in place and enforced.

3. A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule.

We agree with the DNR's assessment that the proposed rules will ultimately reduce costs and intrusive methods, while still achieving the purpose of MRCCA. The DNR went to great lengths to listen to all interests and stakeholders, and to make corresponding modifications to the working drafts that will reduce complexity for local units of government.

Under the current Executive Order, many local plans and ordinances are vague and unclear. These inconsistencies have led to protracted debates between and among the various interests and city officials. For developers and citizens groups alike, this untenable situation means that interested stakeholders have to expend additional resources of time and money in order to weigh in on issues that affect their constituencies. The proposed rules, which provide clear definitions and procedures, will greatly reduce the potential for confusion and conflict between stakeholders going forward.

4. A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule.

In the 2008 MRCCA Report to the Minnesota Legislature by the DNR, a number of methods were identified and analyzed for effectiveness and cost. State rulemaking was one of the options considered, and after legislators reviewed the DNR report, they chose to pursue rulemaking as the best method to reach the goals of the MRCCA. All of the other options relied on continued use of the Executive Order as the underlying management framework. Since the E.O. could not be amended and contained no provision for the DNR to require local units to update their MRCCA ordinance, it was unclear how any of these alternatives would achieve the purpose of MRCCA. Rulemaking was the best option.

5. The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals.

The DNR identified potential costs by surveying local units of government and asking them to provide an estimate of updating their plans and ordinances. With few exceptions, most cities predicted the cost would be less than \$20,000. One example of a city that estimated the cost to be much higher is Brooklyn Park, who estimated \$50,000 to update their plan

and \$50,000 to update their ordinance. While their costs might be higher than some smaller cities, it appears that their estimate was coarsely calculated, and based on worst-case scenario circumstances.

Cities are already required to update their comprehensive plans in 2018, so there should be some economy of scale that could save costs if they update their MRCCA plan at the same time. Cities are also required by law to have ordinances that are consistent with their comprehensive plans. Obviously, it saves money to not update their MRCCA ordinance, but cities should be updating them anyway to ensure their corridor regulations are consistent with the city's most recently adopted plan.

6. The probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals.

The DNR did a good job of summarizing the probable costs or consequences of not adopting the rules. Although there will be additional costs to implement some parts of the rules, such as evaluation of corridor resources, permit requirements and mitigation for variances, we concur that in the long run, state rules will be more cost-effective to implement than the current E.O. framework.

The greatest consequence of not adopting rules, however, would be the steady degradation of river resources – a death by a thousand cuts. Over time, if the river's unique and significant resources are not protected and enhanced, it will negatively impact the quality of life and economic vitality for all the corridor municipalities and the entire region.

7. An assessment of any differences between the proposed rule and existing federal regulations, and a specific analysis of the need for and reasonableness of each difference.

There are federal floodplain regulations that apply to portions of the MRCCA, but they are not inconsistent with the MRCCA rules.

Since there are no federal regulations for the management of MNRRA, the National Park Service relies on the State Critical Area framework to realize the goals and priorities of the MNRRA Comprehensive Management Plan. This unusual partnership underscores the need for state rules to provide consistency and effective management.

8. An assessment of the cumulative effect of the rule with other state regulations related to the specific purpose of the rule.

As the DNR concluded in the SONAR, state shoreland law would apply to a portion of the MRCCA. When there is a conflict between the two sets of standards, the more restrictive applies. Since MRCCA rules are generally stronger than shoreland rules, MRCCA would apply in most cases.

The cities of Dayton and Ramsey are within the boundary of two state designations—the MRCCA and the Upper Mississippi Wild & Scenic River, which extends northward from the Crow River. Legislation passed a few years ago exempting the two cities from the Wild &

Scenic River regulations, so this potential conflict has been resolved.

Performance-based rules

We appreciate the performance standards that were included in the rules as they allow for some flexibility, where appropriate. The dimensional standards are still needed to ensure the MRCCA framework works for all the communities in the corridor. Some of the smaller cities and townships do not have the staff capacity to effectively evaluate performance-based standards.

BLUFF PROTECTION STANDARDS

The bluffs along the Mississippi River are significant natural features that are highly sensitive to erosion, which can lead to poor water quality, property damage, and potentially endanger human life. In addition to providing critical habitat that supports a diversity of plants and wildlife, these natural features also add to the scenic quality and integrity of the corridor.

During the rule development process, defining and protecting bluffs was discussed at great length. Coincidentally, several landslides occurred in the river corridor around the same time, including near the Washington Avenue Bridge in Minneapolis, along Highway 13 in Mendota Heights and at Lilydale Regional Park in St. Paul. According to a study conducted by the DNR, "The structural geologist conducting this evaluation found that all failed bluffs within the MRCCA had slopes that had been modified for building foundations, stormwater management facilities, or road construction, and that these modifications contributed to bluff failure. In these particular instances the bluff failures also resulted in significant damages to built infrastructure." (MRCCA SONAR p. 23)



Comparing a photo of the gorge bluffs along Mississippi River Boulevard in St. Paul (top left) with a photo of the bluffs in Lilydale (top right) it is easy to see how development that is too close to the bluff can dramatically degrade the scenic environment. Serious erosion and degradation of bluff vegetation, some of which is visible in the right hand photo, has also been a problem at this site. Both sites were developed prior to the establishment of MRCCA, but there is protected open space between the river and the development in St. Paul.

While bluffs will undergo erosion over time as part of a natural process, there is a clear correlation that connects development on or near bluffs to an increased risk of bluff failure such as landslides. Changes in rainfall amount and intensity due to climate change will only serve to exacerbate these issues further in the future.

In addition to drastic impacts such as landslides, severe damage to bluffs will occur over time if development is too close to bluffs and/or vegetation is insufficient to prevent erosion.

The information contained in the DNR report provides a solid basis for both the need and reasonableness of including strong and protective standards in the MRCCA rules to ensure bluff integrity is protected to the greatest extent possible. During our oral testimony, we submitted two DNR, Division of Ecological and Water Resources reports into evidence in support of the proposed bluff definitions and standards.

Jennings, C. 2015. A limited inventory of the location and style of June 2014 slope failures; towards better prediction and management.

Jennings, C. et al 2016: Historical Landslide Inventory for the Twin Cities Metropolitan Area

Our specific comments regarding bluff definitions and setbacks are included in the rule-by-rule analysis below.

RULE-BY-RULE ANALYSIS

6106.0050 DEFINITIONS

6106.0050 Subp. 8. Bluff

6106.0050 Subp. 10. Bluffline

6106.0050 Subp. 77. Toe of Bluff

6106.0050 Subp. 78. Top of Bluff

Specifically, we agree that the proposed definitions of bluff, bluffline and other associated features in subparts 8, 10, 77 and 78 are needed and reasonable.

Executive Order 79-19 only provides a definition for bluffline, but not the other features, which has led to confusion by cities and other stakeholders, and inconsistency around how bluff protection is achieved in the corridor.

Defining bluffs as 18% slope or greater is needed because, according to the 2016 Jennings report on landslides, slopes of 20% or greater are much more likely to fail. Defining bluffs as 18% is reasonable because most of the existing city ordinances already use the 18% threshold. Defining bluffs as 25 feet in height or greater is reasonable as it will ensure that

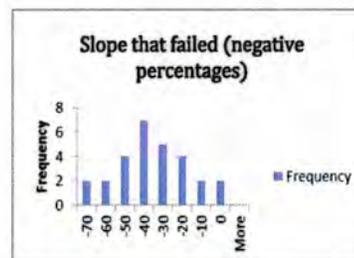


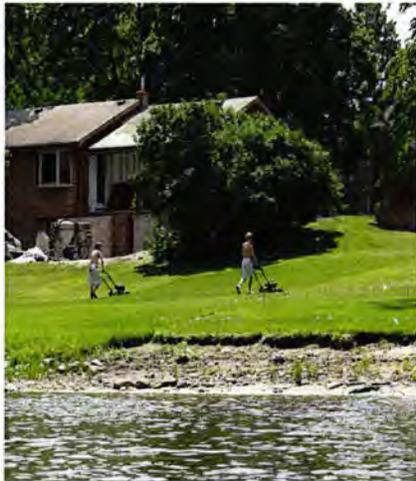
Figure 7 Range of Pre-Failure Slopes Slopes greater than 20% are more likely to fail.

Graph from Jennings, C. et al 2016: Historical Landslide Inventory for the Twin Cities Metropolitan Area, p. 14

small slope features commonly found on residential lots will not cause an undue burden on cities and property owners.

6106.0050 Subp. 9. Bluff Impact Zone
6106.0050 Subp. 68. Shore Impact Zone

The definitions and standards for the Bluff Impact Zone (BIZ) and Shore Impact Zone (SIZ) provide significant improvements over the current standards. The BIZ and SIZ are needed because they ensure better protection of bluffs and shorelines. The BIZ and SIZ are



reasonable because most of the proposed standards for managing vegetation and land alteration only apply to these sensitive areas, leaving other non-sensitive lands in the corridor with fewer restrictions.

One of the weaknesses of E.O. 79-19 is that the vegetation management standards and guidelines are unclear and unnecessarily broad, making it difficult to develop vegetation management policies that can be easily translated into local ordinances.

The proposed rules will do a better job of protecting shorelines and bluffs by requiring they remain in a natural vegetated state.

For example, the interim development regulations included “the selective cutting of trees greater than 4” in diameter may be permitted by local units of government when the cutting is appropriately spaced and staged so that continuous natural cover is maintained.” This is problematic for a few reasons. It does not define “continuous natural cover” or provide clear guidance on how to space trees. It does not incorporate how to manage other types of vegetation, such as shrubs and herbaceous plants, which are critical to ensure healthy

habitat for wildlife and fish. But most importantly, it requires that tree removal be regulated for all land in the corridor. This creates an undue burden on cities and property owners and was rarely enforced.

By incorporating the BIZ and SIZ, restrictions on development, land alteration and vegetation management are focused in the most sensitive areas in need of the greatest protection. This represents a prime example of the DNR listening to all perspectives and identifying a compromise that better meets the needs of cities, as well as ensuring protection of the river’s most important resources.

6106.0050 Subp. 56. Public River Corridor View

The definition of “Public River Corridor View” provides a basic framework for cities to work with that will ensure a consistent approach to protecting views throughout the corridor. The term Public River Corridor Views appears throughout the rules and numerous standards require that the identified views be protected.

(Also see comments on 6106.0070, Subp. 4B)

6106.0070 PREPARATION REVIEW AND APPROVAL OF PLANS AND ORDINANCES

6106.0070 Subp. 4. Content of Plans

A. MRCCA Plans incorporated into Comprehensive Plans

We strongly support the requirement that local MRCCA plans be included as a component of each corridor city's comprehensive plan. Linking these together will ensure that communities are reviewing and renewing their MRCCA plans at least once a decade. It will also help to avoid confusion when conditional use permits and variances are reviewed by local planning commissions, especially when one of the conditions for approval is consistency with the city's comprehensive plan.

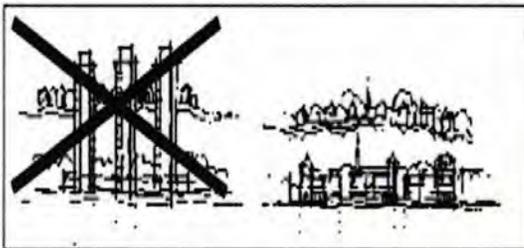
B. Plans must contain maps, policies and implementation provisions

The guidance provided in this section of the rules is extremely important, as it will set the baseline for resources that are important to each city. Some cities have expressed in their comments that completing the required inventories for their MRCCA plans will cause an undue burden, but we see these studies as essential to the long-term protection of the river's most treasured resources. We also believe that giving cities more control over identifying and prioritizing the river resources in their community will lead to greater local ownership and support of the National Park, and ultimately better protection of the key resources identified in Minnesota Statutes §116G.15 Subd. 1-4.

B. (2) Identifying "Public Corridor Views"

As part of their comprehensive plan, each municipality will "identify and protect those public river corridor views and other scenic views deemed important by the community" This provision offers each community an opportunity to engage its residents and stakeholders, including neighboring communities, to take stock of existing views, viewsheds, identifying aesthetic preferences and discerning which landforms and viewsheds have the most value. This approach is reasonable because it requires local cities to identify and protect specific river corridor views, as opposed to the current regulations that require blanket scenic protections for large areas of the corridor. Some cities have expressed an interest in more guidance from the DNR regarding how to identify and

Figure Y
New building scale
should be sensitive
to topography



Community planning is a powerful tool for ensuring that views of the river landscape are preserved. In the example above, a graphic from the 2002 City of St. Paul River Corridor Plan (top left), makes it quite clear that the built environment should not block views of the bluff. The photo of a recent development on St. Paul's West Side Flats (top right) demonstrates how well the planning led to a building that fits into the river valley context.

prioritize views in their community. We think a good place to incorporate this suggestion is through the model ordinance the DNR intends to create once the rules are formally adopted.

6106.0070 Subp. 6. Ordinance Flexibility

FMR was previously opposed to the provisions for ordinance flexibility, but DNR added criteria to ensure that resource protection and/or mitigation will be adequate. The criteria for ordinance flexibility are strong and must not be weakened. It is reasonable to provide cities with some provisions for approving an ordinance that are not in strict conformance with the rules provided that cities can show that significant MRCCA resources will not be impacted by development. We particularly appreciate the requirement that to obtain approval for a flexibility request, cities must document their proposed mitigation.

6106.0080 ADMINISTRATIVE PROVISIONS FOR ORDINANCES

6106.0080 Subp. 2 Variances

6106.0080 Subp. 4. Conditional Use Permits

6106.0080 Subp. 5. Mitigation

Granting variances and CUPs within the MRCCA can lead to serious negative impacts to the river's unique and significant resources. We support the requirements in Subparts 2, 4 and 5 because they provide criteria for approval and proportional mitigation. Although it may seem repetitive, it is essential that "the local government's findings of fact accompanying the issuance of any variance must include a finding and evidence supporting a finding that the requested variance is consistent with the purposes and scope of this chapter." (Subp. 2. C.) Cities sometimes combine variances if there is more than one proposed for a single property. The result of this is that the findings of fact refer to underlying zoning, but not the river corridor zoning.

The combination of requiring findings that tie back to the MRCCA rules, and requiring mitigation will ensure the river and National Park resources are fully considered during discretionary actions and decisions.

6106.0100 DISTRICTS

We support the description and intent of the six land-use districts in the proposed rules; however, there are a number of instances in which we disagree with how they are mapped. Our comments on the district maps can be found below.

There were several drafts of the district classifications reviewed by stakeholders during the rule development process. Earlier versions included a park district, but due to the diversity of existing and planned parkland, DNR decided instead to identify parks and public access as a priority in the intent statement for several districts: "providing public access to and public views of the river are a priority in this district."

We are concerned that in areas where parks are planned, but not yet implemented (such as UM and UC in Minneapolis), allowing intense development right along the river could delay public access in areas with rapidly growing urban populations that need access to parks and open space. We recommend that the DNR require that the district descriptions and statements of intent from the rules (6106.0100 Subparts 3-8) be included in local MRCCA ordinances once the rules are adopted.

6106.0120 DIMENSIONAL STANDARDS

6106.0120 Subp. 1 Purpose.

Public river corridor views is not included in the definition of primary conservation areas, so it should be added to line 38.17 to say:

“The purpose of this part is to establish dimensional standards that protect primary conservation areas **and public river corridor views** from impacts of development and...”

6106.0120 Subp. 2 Structure height.

The Mississippi River provides some of the most sweeping scenic views in Minnesota and these iconic views and viewsheds are public resources that should be protected for current and future generations. Scenic views provide a sense of place for local residents, attract new residents and businesses to the Twin Cities, and inspire tourism in the region.

Protection of scenic views by limiting building heights in the MRCCA was also discussed extensively by stakeholders during the rule development process. There was significant disagreement about height limits, with local residents and environmental groups favoring lower heights, and local city staff and development interests favoring taller heights and more flexibility. This is an area for which many city staff requested performance standards for building height and the final draft did include them in addition to minimum dimensional standards.

6106.0120 Subpart 2A (height limits)

On line 38.20, we recommend removing the comma after “accessory structures.” With the comma in place, it reads as though the clause “as defined by local ordinance” applies to both structures and accessory structures. Since structures are defined within these rules, but accessory structures are not, the clause should only apply to accessory structures.

We support the height limits listed in Subpart 2A, 1-6 and the inclusion of a performance standard in RTC (River Towns and Crossings), UM (Urban Mixed) and UC (Urban Core) that require (or encourage) buildings to tier away from the river and to minimize interfere with river corridor views. Likewise, we support the performance standard included in SR (Separated from River) requiring a structure's height to be “generally consistent with the height of the mature treeline, where present, and existing surrounding development, as viewed from the ordinary high water level of the opposite shore.”

As these areas are developed and our local population grows, the preservation of scenic

views on the river will become even more needed than it is today.

6106.0120 Subpart 2D (conditional use permits for height)

Height limits in the MRCCA tend to be somewhat controversial, and even with new rules, developers and cities will invariably want to make exceptions to allow some buildings to be taller. Under the existing regulations, city planning commissions often do grant conditional use permits and variances to allow structures to exceed the height permitted. However, it is quite rare for the findings of fact associated with those official actions to directly address the potential impacts to the river. Establishing a process for evaluating the impacts to scenic views, and taking steps to mitigate those impacts, is needed in order to prevent degradation of the river’s unique scenic character. We support the standards for granting a CUP for height in the proposed rules, as they will ensure that exceptions for height are reviewed within the context of the MRCCA.

Although we support the proposed height limits per district, some of the proposed mapping of districts will not provide adequate protection of scenic views, especially in the Gorge, around Grey Cloud Island, and along the bluffs surrounding Spring Lake. Our comments on the maps are summarized in the section on district maps, below.

6106.0120 Subp. 3. Location of structures.

The proposed structure setbacks from shorelines (Subp. 3A) and bluffs (Subp. 3B) are needed and reasonable, in order to prevent erosion and habitat degradation. We support the shoreline and bluff setbacks in the proposed rules, as they are generally consistent with state shoreland law, floodplain regulations, existing MRCCA standards and most city ordinances.



This development in Lilydale was built much too close to the bluff (prior to the establishment of MRCCA) creating serious and costly bluff erosion problems, as well as scenic impacts.

6106.0150 VEGETATION MANAGEMENT STANDARDS

The vegetation management standards in this section are needed and reasonable, and we recommend no changes. As stated in the definitions section of our comments, Executive Order 79-19 guidelines for managing vegetation were insufficient and difficult to enforce.

The standards in the proposed rules provide a permitting process that will limit vegetation removal in sensitive areas like the Bluff and Shoreline Impact Zones (BIZ, SIZ) and require



restoration plans to ensure native plant communities are protected and enhanced. The permit process is needed because local government units have had difficulty preventing the destruction of critical habitat.

The photo to the left shows an example of a clear-cutting of mature oak trees in Mendota that could have been avoided if a permit had been required.

6106.0170 SUBDIVISION AND LAND DEVELOPMENT STANDARDS

6106.0170 Subp. 1. Purpose

FMR strongly supports the open space dedication requirements in this section as it ensures that the natural and scenic character of the river, and its biological and ecological functions will be preserved as the corridor develops. We strongly disagree with the comments of some groups that claim this is a taking of property. State law authorizes local governments to require developers to dedicate a “reasonable portion of buildable lands” as public amenities, including land for parks, recreational facilities, trails, wetlands and open space. Minn. Stat. § 462.358, subd. 2b(a) (2015) and Minn. Stat. § 394.25, subd. 7 (2015).

The requirement for open space dedication in the MRCCA is nothing new— in fact it pre-dates the state law requirements. Executive Order 79-19 included this requirement in the “Standards and Guidelines for Preparing Plans and Regulations,” although it is vague compared with the proposed MRCCA rules.

From Executive Order 79-19:

- C.6. Local units of government and regional and state agencies shall develop plans and regulations to maximize the creation and maintenance of open space and recreational potential of the Corridor...
- C.6.d. Plans and programs to acquire sites for public access to the river and to protect open space areas shall be adopted
- C.6.f-g. In the development of residential, commercial and industrial development, a developer shall be required to dedicate to the public, reasonable portions of appropriate riverfront access lands, other lands in interest therein, or cash in lieu

6106.0170 Subp. 2. Applicability

We are comfortable with setting thresholds, especially for properties that are not right on the river, to ensure that open space dedication does not create an undue burden on local

cities to monitor protected open space for a large number of small properties. We disagree with the 10-acre threshold for river-adjacent properties, however, and we concur with the National Park Service assessment that six acres is a more appropriate threshold for requiring that primary conservation areas be preserved. Open space dedication is needed along the river in both rural areas with high conservation value as well as in rapidly changing urban areas.

Other than river's banks, bluffs and shorelines, many of the urban areas slated for redevelopment have few "primary conservation areas." Open space dedication for smaller parcels is needed in these areas to ensure that keeping the riverfront in a natural state or restoring vegetation when necessary is given priority. This is especially true in Minneapolis and St. Paul where both cities have existing policies that wherever feasible, land along the river should be public parkland.

The 10-acre threshold for applying open space dedication requirements to river-adjacent land is too high for the UM (Urban Mixed) and RTC (River Towns and Crossings), because most of the parcels in these districts are smaller than 10 acres. We believe the threshold should be changed to six acres. Much of the land within the UM will undergo redevelopment in the next 20 years and public access to the river will be needed to support growing numbers of urban residents and visitors. Some cities may argue that it is overly burdensome to monitor and enforce open space requirements of small acreages but we believe the statute requires these resources to be protected and the benefits that accrue in terms of property values, scenic enhancement and ecological health will last for generations and are easily worth the effort.

6106.0170 Subp. 4. Design Standards

Conservation design, or clustering away from the river, is a good strategy for ensuring that some wildlife habitat and other important ecological functions along the river are preserved. This is especially important in undeveloped areas of the corridor and areas slated for redevelopment.

The requirement for 50% dedication of open space in the Rural and Open Space District is needed to protect, as the statute requires, the specified scenic, geologic and ecological resources, and it is reasonable, because most of these areas are already zoned for rural low-density development.

The ROS district contains lands with highest ecological integrity and function. Open space dedication in the ROS is needed to preserve quality habitat along the river, and maintain the potential for public access to the river in the future.

DISTRICT MAPS

MAP 1: DAYTON TO ANOKA Slide 19: King's Island map (City of Anoka at City of Ramsey border)

We recommend that King's Island be in the ROS District instead of RN. This area is in the floodplain and should be in the district with the highest protections, such as the 200-foot structure setback from the river. This area has the same qualities as the natural areas and parks in Minneapolis and St. Paul, and it should be in the ROS district to maintain consistency.



MAP 4: MINNEAPOLIS

Above the Falls (Plymouth Bridge to Camden Bridge)

Some of the changes that we requested were made to the Minneapolis map, such as changing the area from Plymouth to Lowry on the west side of the river from UC to UM. This is much more appropriate for an area that will someday be part of the Above the Falls Regional Park.

In general, we think UM is appropriate for the Above the Falls area because it will be undergoing a major transformation in the coming decades. A significant portion of the MRCCA is within the Above the Falls Regional Park boundary, and some of the land slated to become parks and trails is still owned privately. We do have a concern that since this area will no longer be subject to a bluff setback (the steep banks are less than 25 feet high), the UM District ordinary high water level setback of 50-feet from the river will be insufficient to provide room for future trails. A reclassification to RTC District (with a 75-foot setback) for the land adjacent to the river would afford some additional protection, and since many of the parcels are less than 10 acres in this section of the river, no open space dedication would be required by the proposed MRCCA rules.

The Mississippi River Gorge (Franklin, Lake Street, Ford bridgeheads)

In general, we are still concerned about heights at bridgeheads in the gorge, however the RTC height standard was set at 48 feet instead of 56 feet, providing some protection of scenic views at bridge crossings.

Nicollet Island (Hennepin Ave Bridge)

We requested that Nicollet Island be changed from UM to RN. The northern half was changed to RN and the southern half was changed to RTC. We recognize this was a compromise, however we still think all of Nicollet Island should be in RN. Most of Nicollet Island is owned by the Minneapolis Park and Recreation Board, and although it is very close to downtown, it has strict covenants and lease agreements that do not permit dense

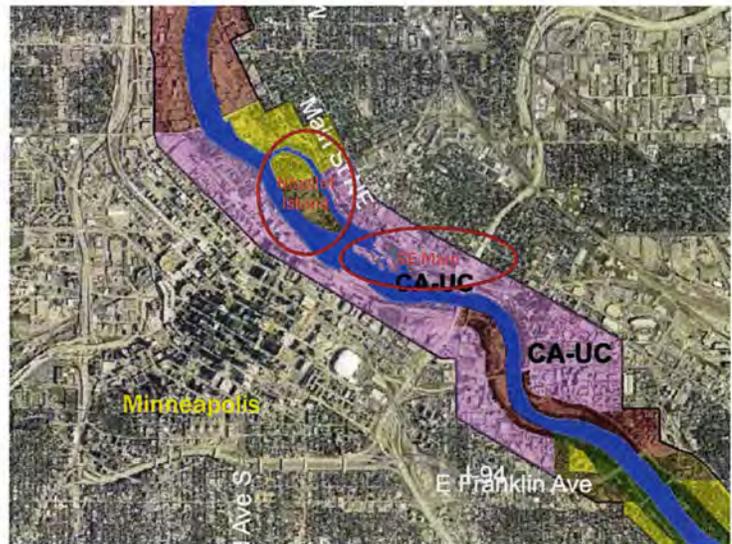
urban development. Nicollet Island is a major feature of the St. Anthony Falls National Historic District. It has a small neighborhood of less than 150 people, many of who live in historic houses that add character to the park and historic district. There are no tall buildings on the island and it is zoned and guided for low-density residential neighborhood and public parkland.

We do not see any reason to differentiate the southern half of Nicollet Island as RTC and we are concerned that if CUPs for heights greater than 48 feet were granted for the few private parcels on Nicollet Island, it could damage the historic small town feel of this unique place that is frequented by park users and visitors from around the world.

The Minneapolis Park and Recreation Board recently approved a new regional park master plan for the area, which calls for maintaining the existing uses and historic character, while adding more natural features to the island, such as restoring land along the East Channel of the Mississippi River and replacing the paved road with a “woonerf” which can be used by bikes and pedestrians with limited automobile traffic. This plan is consistent with the RN District.

Southeast Main Street (Hennepin to Washington SE)

River-adjacent land on the east bank between Main Street and the river from Hennepin to the Washington Ave. Bridge should not be in the UC-Urban Core district. This is within the most visited section of the National Park and the St. Anthony Falls area has arguably



the most historically significant geography in Minnesota. We understand that the City is planning buildings that are taller than 65 feet between Main Street SE and University Ave., so UM or UC makes sense for that area. The unrestricted heights of the UC district would be highly inappropriate, however, for the area right along the river. This area is within the boundary of the Central Riverfront Regional Park, includes Father Hennepin Bluffs Park and Hennepin Island, and is adjacent to the Stone Arch Bridge. There are private parcels in this area, including University of MN owned land along the shoreline, and if development is not limited, the riverfront park and Historic Main Street could be negatively impacted. Tall buildings in this area could wall off the river and the Stone Arch Bridge from area residents and visitors and would not be in keeping with the surrounding open space or the many historic structures on Main Street.

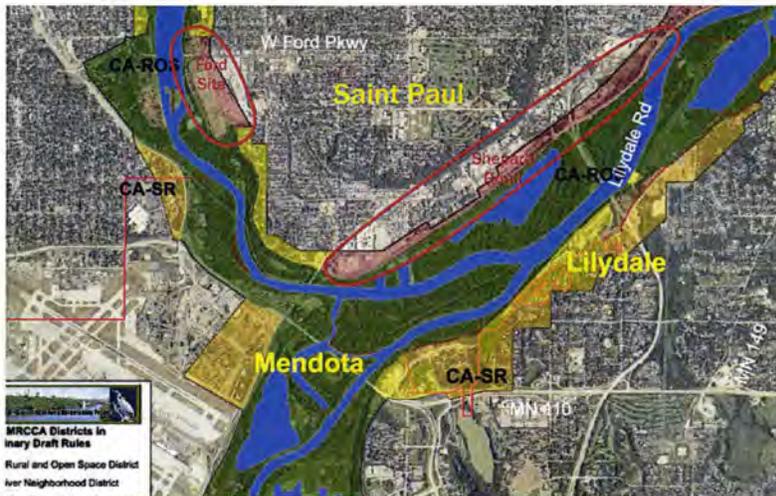
MAP 5: ST. PAUL

Confluence of the Minnesota and Mississippi Rivers

We continue to have concerns that some of the most scenic parts of the MRCCA will end up with weaker standards for structure height than the existing MRCCA ordinance. In particular, the Mississippi River Gorge on the east side of the river from Highland Parkway to Otto Avenue. At the center of this area is one of the most historically and geographically significant places in

Minnesota, the confluence of the Mississippi and Minnesota Rivers. The confluence area has unique geography that connects our community with 10,000 years of history. One of the largest waterfalls in the history of planet earth existed here, before receding to the present day location of St. Anthony Falls. Native Americans considered this area highly spiritual and important,

calling it “Mendota” which means “the meeting of the waters.” It’s no coincidence that this location is the birthplace of Minnesota – Ft. Snelling was built high on the bluff where soldiers and early settlers of the territory had a commanding view of both rivers and the surrounding landscape. In addition to its historical significance, the scenic qualities of this area are dramatic, unusual and worth preserving.



Under the city’s existing MRCCA ordinance, the area landward of Mississippi River Boulevard and Shepard Road from the Minneapolis-St. Paul border to Otto Avenue has a 40-foot height limit, but in the proposed rules, height limits for some parts of the confluence area would increase to 65 feet and could be even higher with a CUP. Taller heights in this area could diminish the scenic character of this important place, which presently has very few buildings that are taller than the trees.

Ford Motor Company site

At the Ford site, which is just north of the confluence, we support the use of the RTC district for the area along Mississippi River Boulevard, and the UM district to the east, as it is now shown on the draft map. We are aware that the City of St. Paul would like the Ford site to be all UM-district in order to have taller buildings closer to the river. If the city can provide a visual analysis during the development of their ordinance that shows buildings will not be readily visible from the river, we would potentially support higher height limits for a larger portion of the Ford site during the city’s MRCCA ordinance revision process.

Land owned by Ford between Mississippi River Boulevard and the river should remain in ROS, including the area around the steam plant and Ford hydroelectric dam operations.

This area is part of the river gorge as it enters the confluence, and it is surrounded on three sides by regional parks (Mississippi River Gorge, Hidden Falls and Minnehaha Falls), all of which are in ROS. The river dependent industry can remain in the ROS District without restrictions, so there is no reason to change this.

Shepard Road

We recommend changing the UM district to the RTC district for the area north of Shepard Road between the Highway 5 Bridge and Otto Ave. RTC has a maximum height of 48 feet, which is more appropriate for the confluence and river valley, while still allowing taller development, if visual studies can show that the views from the river and floodplain lakes will not be impaired. We have heard from numerous concerned citizens who live and/or recreate in the immediate area that do not want the river corridor height limits increased from the existing 40-foot limit. Changing this area to RTC is a fair compromise that will ensure the highly significant resources adjacent to Shepard Road are adequately protected.



The Shepard-Davern site, just east of Highway 5, is an example of a development site that is highly visible from the confluence area. The photo above, taken from the opposite shore within Fort Snelling State Park, demonstrates that the 44.5-foot tall parking ramp is visible and degrades the scenic values of this very significant area.

The Shepard-Davern site, just east of Highway 5, is an example of a development site that is highly visible from the confluence area. Currently there is an airport parking lot on the site that is 44.5 feet in height. The photo below, taken from Pike Island at Ft. Snelling State Park, clearly shows that the structure is visible from the river.

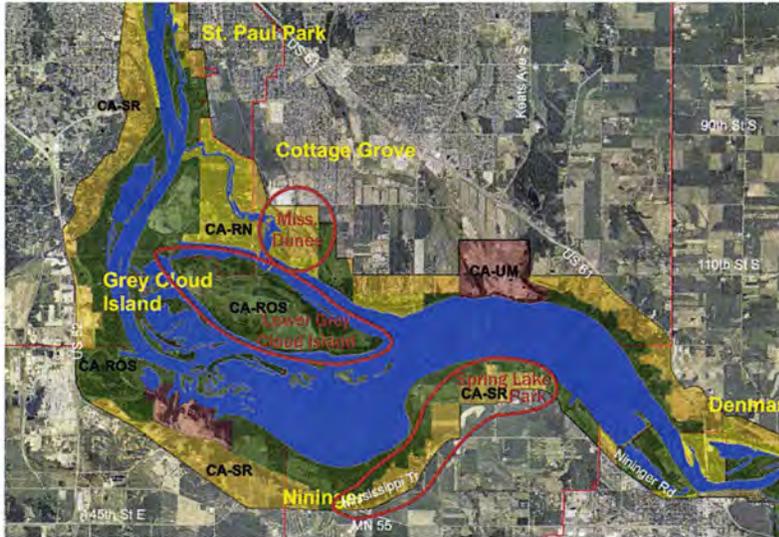
The 65-foot height limit in this most special and scenic location is demonstrably not protective of the scenic values here as required by statute. We see no reason for this site to have a 65-foot height limit and many of the local residents agree.

MAP 6: ST PAUL TO NININGER

This map includes some very significant resources, including Pine Bend Bluffs, Schaar's Bluff, Grey Cloud Dunes, and numerous floodplain islands and backwater lakes. This area has some of the highest quality native plant communities in the metro area and considerable investment has been made to set aside riverfront land for natural areas, regional parks and trails and spectacular scenic overlooks.

Blufflands around Spring Lake (Rosemount, Nininger, Cottage Grove, Denmark)

We are very concerned and surprised that so much of this special, scenic area is in the SR district. We are concerned because these areas have no height limits other than underlying



zoning and they are much too close to the river and bluffs. We are surprised, because most of this land is in Nininger Township, Denmark Township and rural sections of Cottage Grove that have no plans to develop or urbanize in the foreseeable future.

By definition, these areas should not be visible from the river, but photos show numerous SR locations that are clearly visible. Other areas

in the SR are not visible now because they are farmland, but should that change the rural and open space character of these areas, as well as views from the river could be dramatically and negatively impacted.

One good example of this is Mississippi Dunes Golf Course in Cottage Grove. This site is visible from the river and portions of Grey Cloud Island and should not be in the SR district. ROS is the best district for this area, but RN would also be acceptable.

Another example is the boundary for ROS/SR along the bike path west of Spring Lake Park. It should be moved west to the road instead of being on the bike path. At the very least, RN could be designated between the trail and the road instead of SR.



Lower Grey Cloud Island

All of Lower Grey Cloud Island is in the ROS - Rural and Open Space District. The ROS should not be changed to UM in this area as requested by the property owner. ROS is highly appropriate for this land for a number of reasons.

The photo above is looking northeast towards Cottage Grove from Grey Cloud Island. The Mississippi Dunes Golf Course is visible from the river here, so it should not be in the SR-district.

Lower Grey Cloud is the largest island in a system of dozens of islands that provide unprecedented wildlife habitat for an urban area. Recent studies, conducted as part of the

unpublished "Nelson Mine Expansion Draft Environmental Impact Statement," (City of Cottage Grove), have shown that the southern tip of Lower Grey Cloud Island includes massive mussel beds that support more than 1 million mussels, some of which are rare or threatened species.

Although there is a large aggregate mining operation on Lower Grey Cloud, the environment is largely rural, open and natural with pockets of existing habitat. The open space character of the area, along with its habitat value and potential, demonstrate that ROS is the right district for Lower Grey Cloud. Exemptions for river dependent industrial uses allows for some flexibility, while still protecting the basic river character and resources of this unique area.

The City of Cottage Grove's 2030 comprehensive plan makes several references to possible redevelopment on Lower Grey Cloud in the future once the mining operation is completed. There is a strong interest from the city to provide additional parkland and public access to the river, as well as increasing tax base through new residential and/or commercial development. According to the utility phasing plan however, new development would not occur until 2030 or later.

We strongly recommend that this area remain in ROS until more work can be done to consider development scenarios and how those scenarios would impact the sensitive resources of Lower Grey Cloud Island. The MRCCA was established for many reasons, but protecting and restoring the biological and ecological functions of the river in areas like Grey Cloud is essential if the program is to be successful.

To conclude our comments, we would like to thank the DNR and all the stakeholders for a robust process to establish state rules for the Mississippi River Corridor Critical Area. We support adoption of these rules, and it is our hope that you will find these comments helpful and will give careful consideration to incorporating Friends of the Mississippi River's suggestions and recommendations into the final version of the rules.

Sincerely yours,



Whitney L. Clark
Executive Director

July 5, 2016

Administrative Law Judge, Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

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ADMINISTRATIVE
HEARINGS

ADMINISTRATIVE HEARINGS

JUL 06 2016

REC'D AT LOBBY DESK

Re: Comments on the Proposed MRCCA Rule

Dear Judge Lipman:

Thank you for the opportunity to comment on the proposed rules which, if adopted, will dictate land use decisions in the Mississippi River area in the Twin Cities for many years to come. The process to impose restrictions on land use within the river corridor has been ongoing for years. I have been a firsthand participant in an attempt to provide a single family residential homeowner's perspective on how additional rules will impact our lives and management of our property. I have made numerous suggestions on how to make the rules protective yet reasonable for landowners to conduct responsible day to day activities in a manner that will not damage the river. While the DNR has picked up on some of these suggestions, they have by and large chosen to prohibit their use in the areas they were specifically designed for – areas with slopes far away from the river itself. It also disappointing that the DNR has chosen to discard provisions they had with residents and the city to allow a small degree of flexibility. I therefore am providing comments and recommendations as part of this rulemaking process. Please accept these comments and recommendations in addition to those I presented at the public hearing June 21, 2016 in Anoka.

BASELINE FOR THE RULES

The DNR has stated in the SONAR (p. 14) that Executive Order (EO) 79-19 would be the baseline for rule because it is familiar with local governments. This is puzzling as the SONAR also describes numerous flaws with EO 79-19 (p 6-7). It is troubling that DNR proposes to promote ideas and standards that were originally forced on local governments through an executive order that bypassed the legislative and administrative rulemaking processes. Furthermore the legislature (116G.15) did not authorize or direct the DNR to adopt definitions, standards or other criteria from EO 79-19 except for the transfer of duties from Environmental Quality Board (EQB).

The DNR goes on in the SONAR (p.15) to speculate on the probable costs of not adopting the proposed rules based on a single study relating to northern Minnesota lakeshore property values. While that study did look at property values of lake properties, it did not look at riverfront properties. Rivers and lakes are distinctly different types of waters. The study utilized equations for estimating values based on several parameters including the size of the lake (SA, LKAREA) which cannot be directly applied to rivers. Extrapolating property values from lakes to rivers is as inappropriate, as is comparing properties from rural northern Minnesota to the metropolitan area. Personally, I have watched as riverfront properties below the Coon Rapids Dam –which tend to have a more wooded and natural landscape than the more lake-like homes above the dam, have stayed on the market for extended periods of time, often selling at reduced rates. The use of this report to help justify the extensive level of regulation being proposed for the Mississippi River properties in the twin cities area is in my opinion highly inappropriate and misleading.

BLUFFS , TOP OF BLUFF, TOE OF BLUFF - DEFINITIONS

The following terms are proposed to be defined in the rule – bluff (6106.0300 Subp 8), toe of the bluff (6106.0300 Subp 77) and top of the bluff (6106.0300 Subp 78). The SONAR (p. 24) states the value of 18% slope as the basis for the bluff definition was retained from E.O . 79-19 because “it was a standard widely adopted by local governments and accepted by environmental organizations.” While this may be true, it must be restated that the 18% slope criteria was originally imposed on local governments through executive order and not through the legislative or administrative rulemaking process. Just because local governments were forced to adopt that standard does not mean it is the appropriate standard. And while the DNR apparently conducted various simulations to justify use of the 18% bluff slope, they appeared to have ignored the option to utilize the statewide definitions relating to bluffs (Mn Rule 6120.2500) which have gone through the appropriate legal processes. Ironically the SONAR (p. 30) describes the bluff features definitions and protections as a uniform set of standards. However these criteria are not the same as the bluff features definitions and protections found in the state shoreland standards (30% slope, 50 foot distance), thus creating non-uniformity. And many communities will have to adopt and enforce two separate sets of bluff related definitions and standards in the MRCCA and non-MRCCA areas.

The DNR has also proposed to introduce a wholly new concept into the definition of bluff (6106.0050 subp 10 B) in order to protect near vertical features such as isolated cliffs and rock outcrops. While this is commendable, the definition proposed (10 feet, 100% slope) will capture many parcels of land that do not contain the types of cliffs and rocks the DNR describes. A 100% slope is not vertical – it is instead a 45 degree angle which is about the same angle the sun appears at it’s highest point in the sky in late September. As such numerous properties will fall into the nonconforming category- a situation the DNR has stated it has tried to minimize, unfortunately unsuccessfully in this case.

The consequences of having an area declared as bluff are substantial. There would be prohibitions on structures (homes, toolsheds, doghouses, bird houses), impervious surfaces (patios, grills), vegetation removal (tree and plant trimming), and land alterations (any amount of soil movement) (SONAR (p.22) And so the bluff related definitions should truly reflect those iconic bluff areas that were intended to be protected. They should not include every slope in someone’s back which are commonly found in the north metro area. It is interesting to note that even the National Park Service does not recognize bluffs in the north metro area. John Anfinson, superintendent of the Mississippi National River and Recreation Area has stated: “It’s a prairie river with banks and not bluffs, until it drops 210 feet at St. Anthony Falls and becomes a tight river canyon.”(See Attachment- Jan 3, 2015 Star Tribune Article, Big ideas, big issues for big river park))

RECOMMENDATIONS: Utilize the bluff and related bluff terms currently used in the state shoreland rules (6120.2500). This is reasonable in that it truly would provide for uniform definitions of bluff and bluff features, thus providing protection of the truly iconic bluffs described in the SONAR (p. 25) while providing some relief from the stifling land and vegetation management prohibitions in areas such as the sandy slopes. substantially set back from the river itself, found in the north metro area.

Bluff. "Bluff" means a topographic feature such as a hill, cliff, or embankment having all of the following characteristics:
A part or all of the feature is located in a shoreland area;
B.the slope rises at least 25 feet above the ordinary high water level of the waterbody;

- C. the grade of the slope from the toe of the bluff to a point 25 feet or more above the ordinary high water level averages 30 percent or greater; and
- D the slope must drain toward the waterbody.

An area with an average slope of less than 18 percent over a distance for 50 feet or more shall not be considered part of the bluff.

Toe of the bluff. "Toe of the bluff" means the lower point of a 50-foot segment with an average slope exceeding 18 percent

Top of the bluff. "Top of the bluff" means the higher point of a 50-foot segment with an average slope exceeding 18 percent

RECOMMENDATION: Eliminate or revise the proposed definition (6106.0050 sub 10 B) so as to not include the many areas that are not vertical cliffs or rock outcrops.

PREVIOUS COLLABORATION WITH DNR

In the past the DNR has worked with our city to develop some modifications to City Code in order to allow some flexibility for landowners to conduct activities that would have little if any impact on the river. There are two instance that I was personally involved in and will testify to the accuracy of these accounts.

Lateral Expansion

In the late 1990s the DNR and NPS encouraged the city to revise the River Stewardship Plan and City Ordinances to adopt NPS Tier 2 standards. During that process many residents learned their homes were non-conforming as they were built to within the "bluff" setback area, including what is now proposed as the bluff impact zone. The City, the residents and DNR worked together to craft an ordinance that would allow the homes to remain and rebuilt or expanded in a manner that would not damage the river. This included allowing lateral expansions which did not encroach further toward the river or the slope. I personally recall working with DNR staff- Steve Johnson and Sandy Fecht to develop ordinance language to allow such lateral expansion. This was adopted by the City (Brooklyn Park Ord. 2001-951, passed 3-26-2001, Code 152.530) with the help of the DNR. As part of the current rulemaking process the DNR was directed to "take into account municipal plans and policies, and existing ordinances and conditions when developing the guidelines in this section." (MS 116G.15 Subd . 4) It is therefore quite surprising that the DNR has proposed to utilize this lateral expansion allowance (6106.0080 Subp. 3 C) but prohibit it in the bluff areas (6106.0080 Subp. 3 C1) for which it was originally intended to apply with the DNR's blessing.

RECOMMENDATION: delete 6106.0080 Subp. 3 C1 or clarify that lateral expansions can occur within the bluff impact zone.

Doghouse in the floodplain

The SONAR (p.16) states that the proposed rule does not conflict with federal regulations. This statement is misleading. In 2001 the Federal Emergency Management Agency (FEMA) directed that

Brooklyn Park adopt new ordinance language regarding development in the floodplains within the City. In response, the City, the residents, and the DNR worked with FEMA (not an easy task) to allow minor structures (e.g. tool shed, doghouse, etc.) to be built in the flood fringe- which is an area of the floodplain that is not needed to carry the moving flood water. As a result the City Ordinance 152.512 D 1 and 152.514 D (Ord. 2000-936, Am Ord 2005-1033, passed 2-7-05) now allows tool sheds and doghouse to be built in the flood fringe, which is typically located at the base of the bluff. This is the area the DNR is now proposing as a bluff impact zone – where no structure could be built. Such a turn around in DNR's positions is puzzling and frustrating.

RECOMMENDATION: Revise the definition of slope impact zone (6106.0050 Subp. 9) to eliminate the area below the toe of bluff slope from the bluff impact zone.

DECKS AND PATIOS 6106.0140

During the stakeholder meetings and comment periods I had suggested a Halo approach to the standards whereby each structure would be allowed to expand or add a deck within a limited areas around the existing footprint. This was intended to allow the homes in my community a small allowance such as a deck in the bluff areas. The DNR apparently picked up on this and has proposed a similar allowance in 6106.0140 Subp. 6. Unfortunately once again the DNR has decided to excluded this allowance in bluff impact zone (20 feet beyond top or toe of bluff). The DNR provides rationale that the prohibition is simply a modification of the shoreland standards . However a review of 6120.3300 does not reveal any such prohibition of decks and patios on the bluff inmpact zone. Rather it discusses how decks could be built without a variance. Such misuse and misapplication of the DNRs own rules is troubling.

The existing shoreland rule states:

6120.0300 Sub 3 J.

Decks. Except as provided in item H, decks must meet the structure setback standards. Decks that do not meet setback requirements from public waters may be allowed without a variance to be added to structures existing on the date the shoreland structure setbacks were established by ordinance, if all of the following criteria and standards are met:

- (1)a thorough evaluation of the property and structure reveals no reasonable location for a deck meeting or exceeding the existing ordinary high water level setback of the structure;
- (2)the deck encroachment toward the ordinary high water level does not exceed 15 percent of the existing shoreline setback of the structure from the ordinary high water level or does not encroach closer than 30 feet, whichever is more restrictive; and
- (3)the deck is constructed primarily of wood, and is not roofed or screened.

There does not appear to be any prohibition of decks in the bluff impact zone, and so the DNRs proposed change is substantial and cannot be justified as a simple modification. As such the DNR has not clearly demonstrated the need for the deck exclusion in the bluff impact zone.

Recommendation: Remove prohibition of decks in bluff impact zone by deleting 6106.0140 Subp. 6 C

SETBACK AVERAGING

Setback Averaging- Bluff Impact Zone and Slope Preservation Zone

In Brooklyn Park again many homes have been built in the so called bluff impact zone or slope preservation area. The concept of setback averaging makes sense in developed areas. However the prohibition of use of the setback averaging in these areas, would make the concept essentially worthless. Recall that many of these homes are well over 100 feet from the river already.

RECOMMENDATION; Amend 6106.0120 Subpart 3 D by deleting the sentence "No structures or impervious surfaces are allowed in the bluff impact zone or the shore impact zone, except as specified under part 6106.0180".

TRAIL WIDTH

It is of paramount importance to riparian landowners in the corridor to have viable access to the river. The current proposal provides limited access paths (e.g. 4 ft in the bluff impact zone). Landowners should be allowed to have access paths sufficient for their needs. It is not clear how the 4 foot value was determined and as such seems somewhat arbitrary. I have been on trails/paths where 4 feet would have been challenging to accommodate watercraft or equipment. A somewhat wider path would also be less visible and noisy than a mechanized lift.

RECOMMENDATION Amend 6106.0140 Sub 5 A 2 to allow a wider (8-foot) path to be allowed on the slope to accommodate the purpose of the path..

VEGETATION MANAGEMENT STANDARDS

Proposed rule 6106.0150 appears to limit almost all vegetative removal, cutting or trimming in bluff and shore areas. This appears to be excessive, as many homeowners conduct tree trimming in order to maintain reasonable views of the river. It is unclear to what extent the proposed rule would prohibit tree trimming. The standard set in EO 79-19 was to prohibit clearcutting. Selective trimming has a very minor impact compared to clear cutting.

RECOMMENDATION: DNR should clarify that tree trimming and other minimal vegetation management activities are not considered intensive vegetative clearing and are therefore allowed without the need for a permit from the local government.

LAND ALTERATIONS

The DNR proposes to generally prohibit land altering activities in the bluff impact zone (6106.0160 Sub 3 A.) Such prohibitions will prohibit even extremely minor alterations or movement of soil. Even the shoreland rules allow some amount of incidental grading or filling.

RECOMMENDATION: modify 6106.0160 to allow up to 10 cubic yards of grading or filing, consistent with 6120.3300 Subp 4 B.

MITIGATION 6106.0080 Subp 5

DNR is proposing that mitigation be a requirement for permits or variance requests where there is a potential negative impact to primary conservation areas, views or other resources. It is unclear what

the standard is that will be used to determine "potential negative impact". Does this mean that if something that might be visible from the opposite shore , no matter how obscured, could constitute a "potential negative impact" and be subject to mitigation?

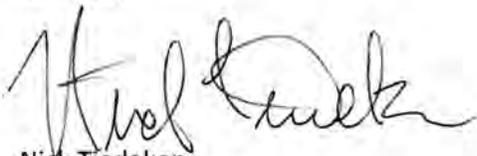
The mitigation must also be directly related to an must bear a rough proportionality to the impact. 6106.0080 Subp 5 Subp B. Again is unclear what this means. What would the mitigation requirement be for the placement of a deck, or a doghouse? Since no guidance has been provided to gauge what this means, the requirement could be open ended with some local governments applying reasonable mitigation requirements for substantive impacts, while others may be tempted to require extensive mitigation for trivial potential impacts.

RECOMMENDATION: Remove the requirement for mitigation (6106.0080)

The high level of regulation proposed is concerning. In the past the EO 79-19 provided some relief for single family residential properties)Specific Standard and Guidance for Preparing Plans and Regulations C.2.a.2) Now homeowners will be wondering if they are allowed to conduct even minor routine activities on their properties. Incorporating the recommendations provided here can help provide some wiggle room so that landowners can conduct engage in routine property management activities without damaging the river.

Please feel free to contact me if you have any questions or would like more specifics on the recommendations.

Sincerely

A handwritten signature in black ink, appearing to read "Nick Tiedeken", written in a cursive style.

Nick Tiedeken
9406 W. River Road
Brooklyn Park, MN 55444

Enclosure

D I A N E


RECEIVED

By: OAH on 7/6/2016 at 5:01 PM

612.331.3636 office
diane@dianehofstede.com
610 Ramsey Street
Minneapolis, MN 55413

June 15, 2016

RE: Diane Hofstede, President of the Great River Coalition, St. Anthony West Neighborhood Organization Board Member, Comments on the Minnesota Department of Natural Resources Working Draft Rules for the Mississippi River Corridor Critical Area

Dear Judge Lipman:

Thank you for the opportunity to comment on the draft working rules for the Mississippi River Corridor Critical Area (MRCCA). The MRCCA rules are of vital interest to me.

As a former Minneapolis City Council member for the Third Ward, City of Minneapolis, St. Anthony West Board Member, co-founder of the Minneapolis Riverfront Partnership, and Chair of the St. Anthony West Small Area Plan Committee, President of the Great River Coalition, and lifetime riverfront resident. I support the purposes and management plan of the 2006 Mississippi River Critical Area Plan and endorse the inclusion of the purposes and management plan from the 2006 rules, shown below, into the DNR rules into the new guidelines.

Purposes:

- protect and preserve a unique and valuable state and regional resource for the benefit of the health, safety, and welfare of the citizens for the state, region, and nation;
- prevent and mitigate irreversible damage to this state, regional, and national resource;
- preserve and enhance its natural, aesthetic, cultural, and historic values for the public use;
- protect and preserve the river as an essential element in the national, state, and regional transportation, sewer and water, and recreational systems; and
- protect and preserve the biological and ecological functions of the corridor.

Management Plan:

- preserve, enhance, and interpret archeological, ethnographic, and historic resources;
- enhance opportunities for public outdoor recreation, education, and scenic enjoyment.
- Preserve, enhance, and interpret natural resources;
- improve the public's understanding of the river and promote public stewardship of its resources; and
- recognize and strengthen people's relationships with the river as a dynamic part of our heritage, our quality of life, and our legacy for future generations.

I support:

- Clarity and guidance for what is required in local plans and ordinances, project site plans and granting conditional use permits;
- Focus on protection and enhancement of primary conservation areas, including public river corridor views;
- Requiring structure setbacks for very steep slopes as well as bluffs;
- Requiring a permitting process for land and vegetation alteration;
- Open space dedication requirements that emphasize public access to the river and bluffs where feasible;
- New tools for ecological restoration and management of native plant communities.

The draft rules, I agree, contain numerous provisions that do not go far enough to protect the river's resources or provide loopholes to avoid following the rules. My concerns are:

- Flexible ordinance provision is too broad to provide adequate protection of the river's resources;

Diane Hofstede MRCCA Comments

Page 2

- Notification to the public for plan and ordinance amendments, boundary change proposals and other discretionary items needs to be coordinated and consistent;
- Scenic protections have been weakened too much through increases to maximum allowed height, removal of performance standards that prevent buildings from protruding above the tree line, and over-use of the CA-SR district;
- Open space dedication requirements for new subdivisions have been reduced by applying a minimum acreage and reducing the percentage to be set aside.

As a community, we have been denied access to our riverfront, due to industrialization, privatization, and pollution. Continued reclamation of our riverfront and preservation is a matter of environmental justice and racial equity issues that cannot be denied. It is only through strong legislative guidelines that the future of our city's greatest asset can be guaranteed. We value our parks as open spaces, as sacred places for reflection, contemplation, and connection with our heritage. We honor the heritage of our native people who once settled along the shores of our mighty Mississippi. It is with their spirit that I urge the strongest guidelines for protection.

St. Anthony West Neighborhood supports providing opportunities and river access, helping to manage storm water, enriching habitat and ecological function of the corridor, protecting cultural and aesthetic resources of the river, restoring and protecting bluffs and steep slopes and providing public river corridor views is essential.

Critical to the Northeast community, and the St. Anthony West Neighborhood, is the designation of the area as CA-RN, rather than the CA-UM. The community is primarily a residential neighborhood with R1A zoning. The St. Anthony West Neighborhood is similar in character to the gorge neighborhoods further south along the Mississippi River that is designated in the draft rules as CA-RN, and Nicollet Island. I support the request that St. Anthony West area, and all of the area North of the Hennepin Avenue Bridge to the Broadway Bridge, be classified as CA-RN.

I do not support the following statement or materials submitted by Kristi Monson and the City of Minneapolis.

District Map - The CA-RN segment directly across the river from Downtown should be modified to match either the adjacent CA-UC or CA-UM districts. A significant portion of this area is zoned R5 (high density residential), and is guided for medium to high density residential in a draft neighborhood small area plan now under development. The portion that is zoned R1A (low density residential) is already protected permanently as a public park so needs no further protection from development. Furthermore, there are also a number of multifamily buildings located in this area that are taller than the CA-RN height limit, and which would be made nonconforming by this new district designation. Finally, this is located very close to the city's and region's urban core, and within the purview of the City's Downtown Growth Center designation and guidance. While it is not the intent to displace the single family homes in this area in the short term, it would be short-sighted to designate this area long term as low density residential.

Thank you for your efforts in preserving our great asset. I stand ready to assist you in writing this important document. Please contact me with any questions.

Sincerely,

Diane Hofstede

Diane Hofstede
Board Member, St. Anthony West Neighborhood Association

Approved by St. Anthony West Board 8/14/2014
August 15, 2014

Daniel Petrik
Minnesota Department of Natural Resources
500 Lafayette Road
St. Paul, MN 55155

RE: St. Anthony West Neighborhood Organization Comments on the Minnesota Department of Natural Resources Working Draft Rules for the Mississippi River Corridor Critical Area

Dear Mr. Petrik:

The St. Anthony West Neighborhood appreciates the opportunity to give feedback on the draft working rules for the Mississippi River Corridor Critical Area (MRCCA). The MRCCA rules are of vital interest to the St. Anthony West area, since large parts of the neighborhood border on the Mississippi River. We consider the riverfront to be our community's and city's greatest asset.

St. Anthony West is in the process of developing a Small Area Plan. It is our intent to emphasize the importance of protecting the Mississippi Riverfront as an amenity for future generations, preserving and protecting our parks, and cultural resources.

Long denied access, due to the industrialization, privatization, and pollution of our riverfront, we have fought to bring back our river as a natural resource & parks.

We support the purposes of the 2006 Mississippi River Critical Area Plan, which states the following purpose of the critical area rules:

- protect and preserve a unique and valuable state and regional resource for the benefit of the health, safety, and welfare of the citizens for the state, region, and nation;
- prevent and mitigate irreversible damage to this state, regional, and national resource;
- preserve and enhance its natural, aesthetic, cultural, and historic values for the public use;
- protect and preserve the river as an essential element in the national, state, and regional transportation, sewer and water, and recreational systems; and
- protect and preserve the biological and ecological functions of the corridor.

We support the purposes of the MNRRA Management Plan to:

- preserve, enhance, and interpret archeological, ethnographic, and historic resources;
- enhance opportunities for public outdoor recreation, education, and scenic enjoyment.
- Preserve, enhance, and interpret natural resources;

- improve the public's understanding of the river and promote public stewardship of its resources; and
- recognize and strengthen people's relationships with the river as a dynamic part of our heritage, our quality of life, and our legacy for future generations.

St. Anthony West agrees that providing opportunities and river access, helping to manage storm water, enriching habitat and ecological function of the corridor, protecting cultural and aesthetic resources of the river, restoring and protecting bluffs and steep slopes and providing public river corridor views is essential.

The St. Anthony West Neighborhood supports the Central Riverfront Regional Park boundaries designation as CA-RN rather than CA-UM. The St. Anthony West Neighborhood is primarily residential, and includes churches, parkland and a few businesses. The underlying zoning classification for properties is primarily R1A. The St. Anthony West Neighborhood is similar in character to the gorge neighborhoods further south along the Mississippi River that is designated in the draft rules as CA-RN. We request that St. Anthony West area, and our community, be classified as CA-RN.

Please contact me with any questions.

Sincerely,

For the St. Anthony West Neighborhood Association

Pete Gamades

Pete Gamades

President, St. Anthony West Neighborhood Association

7/6/16

Office of Admin Hearing
600 North Robert St
PO Box 64620
St Paul, MN 55164

Attn: Administrative Law Judge Eric L. Lipman

Reference: Mississippi River Critical Area Rules (MRCCRC) – Comments

The growing conflict over the future of the Mississippi Riverfront in Minneapolis reflects the age old battle between private development and public use. The stakes are enormous. For it has become a winner take all proposition. Either the Mississippi Riverfront will become surrounded by a forest of high-rises or will continue to hold its place as the great beating heart of the greatest river system in the world open to all. Other cities have recognized and memorialized their Mississippi Riverfront as has St. Louis with its Arch, but St. Louis is just a stop on the highway. Unlike any other city the Minneapolis riverfront stands athwart the Mississippi as it begins its 1,300 mile journey to the sea. And it is this site and only this site on the Mississippi held sacred by the Native Americans who first discovered it and called it the Father of Waters. And the Mississippi itself is of such historic significance that when Grant seized Vicksburg on the river, he split the Confederacy and Lincoln had finally found the general who would win the Civil war. This is the river that divides East from West, North from South, the great national highway of commerce that carries the treasure of our nation out from the heartland to the sea and the cities and countries of the world. Commercially, historically, in the hearts of our indigenous people, we should not let the Minneapolis riverfront area be lost forever inside a stew of steel and concrete. Keep it open for all for as long as the river flows from here

7/6/16

Office of Admin Hearing
600 North Robert St
PO Box 64620
St Paul, MN 55164

Attn: Administrative Law Judge Eric L. Lipman

Reference: Mississippi River Critical Area Rules (MRCCRC) – Comments

Thank you for the opportunity to comment on the draft of the working rules for the Mississippi River Corridor Critical Area (MRCCA). As a lifelong resident of Minneapolis; a former chair of the City of Minneapolis's Capital Long Range Improvement Committee for 24 years; a previous Vice Chair of the St Anthony West Neighborhood Organization for 8 years; a 12 year chair of the St Anthony Catholic Elder Care Nursing Board; I support the designation of the St Anthony West Neighborhood area as CR-RN rather than CA-UM.

This Northeast community differentiates itself with its housing character of R-1 to R-2B and many historic buildings that were first part of the very beginning of the City of Minneapolis and its development. Like the gorge neighborhoods we are a part of the only national park on the Mississippi River. Essential to our neighborhood and environment is that our area serves as a major fly over zone that is critical to millions of bird species: Their very existence is dependent upon access and not impediments to their passage. Thus we need to maintain access physically and visually!

So I beg you to consider the neighborhoods character, historical significance, environmental importance to maintain our community as CA-RN.

Thank you Judge Lipman!

Tony Hofstede

Dave Pinto
State Representative

District 64B



Minnesota House of Representatives

July 7, 2016

Dear Judge Lipman:

As a legislator who represents an urban district bordered entirely on two sides by the Mississippi River, I am writing to you today to share my support for adoption of rules to protect the Mississippi River Corridor Critical Area (MRCCA).

The Mississippi River is one of our state's - and nation's - premier natural, cultural and water resources. This unique scenic, historical, and recreational asset improves the economy and quality of life both of the city of Saint Paul and of our state. The responsibility to help ensure that this resource is available for future generations has been entrusted to us.

I am pleased that the DNR has taken a critical step to live up to this trust. The proposed rules are intended to provide flexibility, local control, and conservation of the MRCCA.

A number of my constituents have concerns about certain details of the proposed rules, such as those relating to building heights in the "urban mixed" district. I share a number of these concerns and hope that they are addressed. On the whole, however, I believe that the proposed rules are a strongly positive step to enhance our protection of the Mississippi River, an irreplaceable resource, for current and future generations.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink that reads "Dave Pinto".

State Representative – District 64B

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JUL - 6 2016

**ADMINISTRATIVE
HEARINGS**





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2016 JUL - 7 AM 7:29
ADMINISTRATIVE
HEARINGS

July 5, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
Saint Paul, Minnesota 55164-0620

RE: MRCCA Rulemaking Comments – City of Hastings

Dear Judge Lipman,

Thank you for the opportunity to review the proposed Mississippi River Critical Corridor Area (MRCCA) rule changes. The City of Hastings supports DNR's efforts to include local communities in the preparation of the rules. The City supports the expansion of local control exhibited within the rules and the creation of land use districts that allow continued development of our downtown riverfront and surrounding neighborhoods. Please see our comments of the February 26, 2016 Revisor by line number below:

Part 6106.0050 – Definitions

- 2.24 – Bluff – “Field verification” should be added to the determination of a bluff similar to language included in the definition for “Toe of Bluff” (12.25), and “Top of Bluff” (13.4).
- 4.18 – Deck - Further clarity needed on what constitutes an “unenclosed” deck; would installation of a screen, or partial walls meet the threshold.
- 6.14 – Intensive Vegetation Clearing - Further clarity needed on what constitutes a “contiguous patch, strip, row, or block”.
- 6.19 – Land Alteration - Further clarity needed on what constitutes a “minor soil disturbance”.
- 7.13 – Natural Vegetation – There is no reference in the definition to the vegetation being natural.
- 9.5 – Primary Conservation Areas - Further clarity needed on what constitutes a “natural drainage route”.
- 9.16 – Public River Corridor Views – “historic properties” should only include those that are publicly owned. Privately owned historic properties should be excluded.
- 10.17 – River-Dependent Use – Non-commercial recreational should be cited.

Part 6106.0060 – Administration of Program

- 16.20 – Duties of Cities - Further clarity needed on what the threshold will be that “affect lands within the river corridor boundary”.
- 17.8 – Duties of Cities – Further clarity needed on whether all conditional use permits or variances must be sent to adjoin governments, or whether it includes only building exceeding the height limit”.

Part 6106.0070 – Preparation, Review, and Approval of Plans and Ordinances

- 19.15 – Plan and Ordinance Review – “underlying zoning documents must be submitted and considered”. Further clarity needed to prevent modification of local zoning documents by others; submittal is for clarity purposes only.
- 19.19 – Plan and Ordinance Review – Metropolitan Council and DNR Commissioner reviews should be concurrent within the 45 day review period. As written, both agencies have a separate 45 day review window for a total of 90 days.
- 20.8 – Plan and Ordinance Review – a definitive time period for Commissioner action must be specified.

Part 6106.0080 – Administrative Provisions for Ordinances

- 27.13 – Nonconformities – clarity needed on Subp 3.C(1). Would an expansion of an existing structure into the Shore Impact Zone be allowed? If an existing structure is presently within the Shore Impact Zone would expansion be allowed provided it does not increase the nonconformity?
- 27.17 – Nonconformities – “original structures” should be deleted. A structures scale and bulk should be consistent with that of existing surrounding development only.
- 29.4 – Conditional and Interim Use Permits – Interim use should be added along with conditional use.
- 30.19 – Accommodating Disabilities – delete Subp. 7.B – Cities do not place an expiry date on permits.

Part 6106.0090 – Incorporations By Reference

- 30.20 – All cited documents should be available online with a link.

Part 6106.0100 – Districts

- 34.11 – District Boundaries within the City of Hastings:
 - o Spring Street must serve as the District Boundary Line between the CA-RN District to the west, and the CA-RTC District to the east. It is not clear on the map if this is the placement of the boundary.
 - o The CA-ROS District located within Sections 26 and 35 of Township 115N Range 17W must be modified to only include that portion located north of the north quarter section line boundary (approximately 4th Street) of said Section 26. All areas south of said line must be included within the CA-SR District based upon the land being “characterized by its physical and visual distance from the Mississippi River” and “not readily visible from the Mississippi River” per Subp. 6 – Separated from River District (CA-SR). Land south of said line is at least 1/4 mile from the Mississippi River.

Part 6106.0120 – Dimensional Standards

- 40.23 – Location of Structures – The Dimensional Setback for the CA-RN District should be 50 feet for all river setbacks. The proposed 100 and 75 foot setbacks will substantially limit improvements within the district.
- 41.1 - Location of Structures – The Dimensional Setback for the CA-RTC District should be 50 feet. The proposed 75 foot setback will substantially limit improvements within the district.
- 41.3 - Location of Structures – Delete line in its entirety; The CA-SR District is based upon the land being “characterized by its physical and visual distance from the Mississippi River” and “not readily visible from the Mississippi River” per Subp. 6 – Separated from River District (CA-SR).
- 41.12 – Location of Structures – The proposed CA-RN District setback of 40 feet will severely limit the use of many existing properties within the District. The setback should be changed to being outside of the Bluff Impact Zone only.
- 41.19 – Location of Structures – “Principal structures” are not defined.

Part 6106.0140 – General Development Standards for Private Facilities

- 48.9 – Decks and Patios in Setback Areas – Change “15 percent” to 25 percent to allow greater use of constrained properties.
- 48.20 – Private Signs – Delete line in its entirety; provision is contrary to the general purpose of a sign.

Part 6106.0150 – Vegetation Management Standards

- 49.16 – Applicability – Definition needed for “natural drainage way”.
- 50.20 – Permit Process – Please clarify the role (if any) of non-local governmental units in the permit process.

Part 6106.0170 – Subdivision and Land Development Standards

- 58.9 – Applicability – All land within the CA-SR District should be excluded from Part 6106.0170 based upon the land being “characterized by its physical and visual distance from the Mississippi River” and “not readily visible from the Mississippi River” per Subp. 6 – Separated from River District (CA-SR).

Thank you for the opportunity to comment. Please contact me with any questions at (651) 480-2378 or jhinzman@hastingsmn.gov.

Sincerely,

CITY OF HASTINGS



John Hinzman, AICP
Community Development Director

July 4, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

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2016 JUL -7 AM 7:30
ADMINISTRATIVE
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Comment on proposed MRCCA rules.

Dear Judge Lipman:

For 33 years I have lived near the Mississippi River in Minneapolis, and for 55 years in Southeast Minneapolis. I have great affection for the area and have been thrilled at the restoration of the river district. But now I am deeply concerned about the direction of new development in the St. Anthony Falls Historic District.

The St. Anthony Falls Historic District in Minneapolis falls within the boundaries of the MRCCA and is therefore subject to MRCCA rules. Buildings within that District are also subject to Historic Preservation Guidelines and to the zoning and conditional use requirements of the City of Minneapolis. Both the Historic Preservation Guidelines (newly revised in 2012) and the City's zoning and conditional use requirements limit the height of buildings in the District.

The proposed Alatus 42 story development at 200 Central Ave. S.E., just one short block in from the Central Ave. Bridge, has nevertheless been approved by the City Council (in the process over-riding the Historic Preservation Commission's vote to uphold its Guidelines). The City will next ask its Zoning and Planning Commission to approve the following:

- "Conditional use permit to increase the maximum allowed height of a building from 4-stories (56 feet) to 42 stories (485 feet)."
- "Variance to increase the maximum floor area ratio from 2.38 to 14.7."
- "Variance to reduce the minimum interior side yard requirement adjacent to the north lot line from 15 feet to 10 feet." (This is the lot line adjacent to the historic Pillsbury Library Building.)

Because the proposed MRCCA rules place the Historic District within an MRCCA Urban Core District, the rules have no height restrictions and thus offer no protection to the Historic District. Instead the rules defer to the City.

It is the collection of buildings that characterize any historic district. Up to this point, new development (and there has been a lot) has respected the character of the St. Anthony Falls Historic District. The collection of buildings remains coherent.

It is my conviction that the City is making an irreversible mistake in approving the Alatus project. The Historic District, just two blocks wide from Main St. along the river to University Ave., will now be open to high-rise development, including properties such as the Pillsbury/General Mills research campus along University Ave. and other properties even closer to the river. The historic character of the District will be gone.

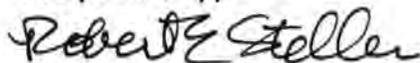
The DNR is charged with conserving the "scenic, environmental, recreational, mineral, economic, cultural, and historic resources and functions of the river corridor." The St. Anthony Falls Historic District is clearly one of the most important cultural and historic resources within the MRCCA. Maintaining its historic character while at the same time encouraging responsible development falls appropriately within the scope of the MRCCA rules.

So how can the proposed MRCCA rules carry out DNR's responsibility to conserve cultural and historic resources? Here are two ideas:

- Place the Historic District in an Urban Mixed district instead of in an Urban Core district. That would impose a 65' height limit.
- Require MRCCA approval of buildings that exceed Historic Preservation Commission guidelines (or equivalent guidelines in other historic districts).

The DNR, through the MRCCA rules, has the responsibility and the opportunity to encourage development that will at the same time preserve for future generations a historic and cultural resource. I think changes in the proposed rules can insure that the DNR will be able to carry out its responsibility.

Respectfully,



Robert E. Steller
110 Bank St. SE
Apt. 201
Minneapolis, MN 55414

Erich Wunderlich
413 5th St SE
Minneapolis MN 55414
July 5, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

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2016 JUL -7 AM 7:21
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Re: Mississippi River Critical Area Rules (MRCCRA)-comments

Dear Honorable Judge Lipman,

My comments on the MRCCRA are to recommend inclusion of building height limits for the Urban Core area.

While there may appear to be appropriate statutes and guidelines in place that would protect the heritage and environment in these areas, local government has demonstrated a willingness disregard these protections.

Note that over the past 2 weeks the Minneapolis City Council has overruled its own Heritage Preservation Commission in order to approve a 42 story condominium tower within the St. Anthony Falls historic district, just one block off the river.

This project is in violation of city planning and zoning guidelines, which call for maximum building heights of no more that 4 stories; and of the St. Anthony Falls Historic District Guidelines, adopted just 4 years ago, which call for maximum building heights of no more that 8 stories.

This building, if allowed to go forward, will set a precedent for several additional sites within the St Anthony Falls district that will become available for development in the very near future. This City Council has demonstrated it will approve building heights that will cause irreparable damage to the riverfront.

Including height limitations in the MRCCRA is a critically needed protection that will help to ensure that the unique character of the riverfront community of the St Anthony Falls area, distinctly different that the downtown Minneapolis side of the river, is preserved for future generations.

Thank you for your consideration.

Sincerely,



Erich Wunderlich

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2016 JUL -7 AM 7:01

ADMINISTRATIVE
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July 4, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

Re: Proposed MRCCA rules.

Dear Judge Lipman:

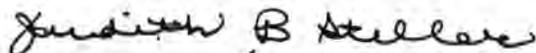
While the Mississippi River Corridor is not my specialty, I write you with deep concern about significant and potentially detrimental changes that are being proposed for the St. Anthony Falls Historic District in Minneapolis. That District is part of the Mississippi River Corridor Critical Area.

The 42 story Alatus development--proposed and now approved by the City of Minneapolis at 200 Central Ave. SE.--is completely out of character with the Historic District and with the City's own zoning, which calls for 4 stories. This building, and others sure to follow, will change the nature of the Historic District forever. There will be no going back.

If the St. Anthony Falls Historic District is assigned to the "Urban Core" category in the new MRCCA rules, there will be no building-height protection for the Historic District neighborhood.

I urge you to consider placing the St. Anthony Falls Historic District in an "Urban Mixed" district so that the 65' height limit could be imposed. That would encourage development in keeping with other new development in the Historic District and in keeping with the character of the Historic District.

Sincerely,



Judith B. Steller, Ph. D.
110 Bank St. SE
Apt. 201
Minneapolis, MN 55414

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NATIVE AMERICAN CAUCUS,
CO-CHAIR

July 6, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
Saint Paul, MN 55164-0620

Dear Judge Lipman:

I write in support of the Minnesota Department of Natural Resources (DNR) proposed new rules for the Mississippi River Corridor Critical Area (MRCCA). These updated rules are necessary to adequately protect the resources of the Mississippi National River Recreation Area (MNRRA) as intended by Congress when it created this National Park in 1988.

The Mississippi River is truly America's greatest river, providing vital habitat and food for 60 percent of North America's migratory birds, 25 percent of the continent's fish species and 145 species of amphibians and reptiles, among many other wildlife and plant species. The health of the Mississippi River is directly tied to our own, serving as the source of drinking water for Saint Paul, Minneapolis and approximately 50 other U.S. cities along its course. Minnesota's historical and cultural roots are traced to this great river.

The federal law establishing MNRRA directs the National Park Service to enhance the 72-mile Mississippi River corridor in the Twin Cities, which was dedicated as a State Critical Area in 1976. No new federal rules or regulations were mandated upon the creation of MNRRA. Instead, the State of Minnesota, through the DNR, entered into a partnership with the National Park Service to ensure protection of the Corridor's nationally significant historical, recreational, cultural, natural, economic and scientific resources and help guide future development.

While a state Executive Order established a framework nearly 40 years ago, updated state MRCCA rules are needed. In 2009, the Minnesota legislature passed a bipartisan law to direct DNR to provide a set of standards to ensure that these resources are protected and preserved for today and future generations. The proposed new rules for the MRCCA are the result of that law, and are necessary and reasonable protections for the Mississippi River.

Thank you for your attention to this important matter.

Sincerely,


Betty McCollum
Member of Congress

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2016 JUL - 8 AM 7:00
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Joanne Netland 110 Bank Street SE #2202 Minneapolis, MN 55414

July 5, 2016

Administrative Law Judge Eric L. Lipman

Office of Administrative Hearings

600 North Robert Street

PO Box 64620

St. Paul, MN 55614-0620

ADMINISTRATIVE
HEARINGS

2016 JUL - 8 AM 11:00

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Reference: Mississippi River Critical Area Rules (MRCAR) comments

Dear Judge Lipman:

As a resident of the East Bank Minneapolis neighborhood on the Mississippi River, I would like to urge consideration of rules regarding height limitations be the same for all zones of the Urban Core. It is especially important for our zone as we are in the St. Anthony Falls Historic District which has implicit restrictions allowing only low-rise buildings..

Just one block from the river at 200 Central Avenue S.E. a 42-story Alatus proposal is moving swiftly through the system with no regard to current zoning rules.

The MRCAR rules regarding an Urban Core defer to existing zoning rules of the city involved "provided tiering of structures away from the Mississippi River and bluff lines is given priority, with lower structure heights closer to the river and bluff lines, and structure design and placement minimize interference with public river corridor views."

The purpose of the MRCAR rules is based upon the policy statement that "It is in the interest of present and future generations to preserve and enhance the natural, aesthetic, economic, recreational, cultural, and historical values of the Mississippi River corridor within the Twin Cities metropolitan area and protect its environmentally sensitive areas."

As a believer in protecting the Mississippi River corridor for future generations it could be beneficial for the MRCAR to support and work in tandem with the height restrictions cited in the St. Anthony Fall Historic District guidelines rewritten in 2012 to preserve and enhance this special Urban Core area.





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by OAH on 7/6/16 @ 5:47pm

July 6, 2016

Administrative Law Judge Eric L. Lipman
Office of Administrative Hearings
600 North Robert Street
PO Box 64620
St. Paul, MN 55164-0620

Comment on proposed MRCCA rules.

Dear Judge Lipman:

I am writing concerning MRCCA rules and how they will potentially impact the St. Anthony Falls Historic District in Minneapolis. As you know, buildings within that district are subject to Historic Preservation Guidelines and to the zoning and conditional use requirements of the City of Minneapolis. Both the Historic Preservation Guidelines (newly revised in 2012) and the City's zoning and conditional use requirements limit the height of buildings in the District.

Because the proposed MRCCA rules place the Historic District within an MRCCA Urban Core District, the rules have no height restrictions and thus offer no protection to the Historic District.

I am deeply concerned that the proposed Alatus 42 story development at 200 Central Ave. S.E., has been approved by the City Council with total disregard for their own Historic Preservation Commission's who voted to uphold Historic Guidelines. The City will next ask its Zoning and Planning Commission to approve the following:

- "Conditional use permit to increase the maximum allowed height of a building from 4-stories (56 feet) to 42 stories (485 feet)."
- "Variance to increase the maximum floor area ratio from 2.38 to 14.7."
- "Variance to reduce the minimum interior side yard requirement adjacent to the north lot line from 15 feet to 10 feet." (This is the lot line adjacent to the historic Pillsbury Library Building.)

In certain situations, government agencies intervene to protect fragile ecosystems that provide critical habitats for endanger species. The St. Anthony Falls Historic District deserves similar protection and consideration to ensure is properly preserved for current and future generations.

If the city of Minneapolis is allowed to override the 2012 Historic Guidelines as well as ignore the current zoning and planning guidelines to allow for the building of a 42-story skyscraper, the precedent will be set and damage to our historic ecosystem will be irreversible.

Nearly 20 years ago Congress designated the area part of the National Park System, making a specific finding that "the Mississippi River Corridor within the Saint Paul-Minneapolis Metropolitan Area **represents a nationally significant historical**, recreational, scenic, **cultural**, natural, economic, and scientific resource," and declared that "there is a national interest in the preservation, protection and enhancement of these resources for the benefit of the people of the United States." See 16 U.S.C. 460zz(a) (emphasis added).

For decades, governments at all levels have made clear that the preservation of the historic and cultural heritage of the Mississippi River corridor within the Twin Cities metropolitan area is of utmost importance.

By deferring to the existing zoning, without any meaningful district-specific requirements, the MRCCA rules do little to require further consideration of the Alatus Project. Even more concerning, the MRCCA rules do not require additional consideration of any future projects in the St. Anthony Falls Historic District. As currently composed, the Minneapolis City Council can unilaterally approve another 40, 50 or 60 story project in the historic district,

Given this most unfortunate precedent, the proposed MRCCA rules will ultimately authorize the demise of the St. Anthony Falls Historic District.

The proposed MRCCA rules are a good start, but they must set forth additional protections if they are to achieve their goals of preserving and enhancing the cultural and historical values of the Mississippi River corridor within the Twin Cities metropolitan area.

They must ensure that local municipalities cannot simply ignore them. To do this the rules should be modified to recognize the unique historical value of districts included in the National Register of Historic places, specifically the St. Anthony Falls Historic District. Such areas should receive their own designation, requiring considerations unique to those districts before projects can proceed.

The rules should also incorporate by reference the St. Anthony Falls Historic District Design Guidelines, which were created for the very purpose and function of the DNR's proposed rules.

The design guidelines were developed and adopted by the Minneapolis Heritage Preservation Commission in 2012, in connection with community groups and the City of Minneapolis. These guidelines establish standards for determining the

appropriateness of work that is planned in the St. Anthony Falls Historic District. Like the proposed MRCCA rules, the design guidelines seek to preserve and enhance the cultural and historical values of that portion of the MRCCA that surrounds St. Anthony Falls. Like the proposed rules, the design guidelines are an extensive effort by myriad stakeholders to establish minimum standards for work planned in culturally and historically important areas. By incorporating them into the MRCCA rules, the DNR can take a meaningful step to ensure that the goals of the MRCCA rules are achieved in the areas they were most designed to protect.

My wife, six year-old daughter and I live in the St. Anthony Falls Historic District on the East Bank of Minneapolis. Our daughter attends school at Marcy Open (MPS) six blocks from our home and we are frequently on foot in the neighborhood. We speak frequently with our daughter about the benefits of living in the historic neighborhood and how important it is to properly steward these valuable resources for current and future generations.

The DNR, through the MRCCA rules, has the responsibility and the opportunity to encourage development that will at the same time preserve for future generations a historic and cultural resource.

Thank you in advance for your service and your serious consideration of these issues.

Respectfully,

Nathan Dungan
President/Founder
Share Save Spend, LLC
34 13th Ave NE
Suite 105
Minneapolis, MN 55413